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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 12 अगस्त, 2025 / 21 श्रावण, 1947

हिमाचल प्रदेश सरकार

LABOUR EMPLOYMENT & OVERSEAS PLACEMENT DEPARTMENT

NOTIFICATION

Shimla-171002, the 2nd July, 2025

No. LEP-E/1/2024.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Judge, Labour Court-*cum*-Industrial Tribunal,

Dharamshala, H.P. on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* "e-Gazette":—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	95/18	Roop Chand	D.F.O. Suket	05-04-2025
2.	84/23	Komal Chand	E.E. I&PH Mandi & other	07-04-2025
3.	85/23	Khem Singh	-do-	07-04-2025
4.	29/21	Raghuvinder Singh	M/s. Divya Himachal Prakashan	28-04-2025
5.	27/21	Ashu Kumar	-do-	-do-
6.	28/21	Rahul Chaudhary	-do-	-do-
7.	25/21	Yash Paul Singh	-do-	-do-
8.	33/21	Vinod Kumar	-do-	-do-
9.	508/16	Narender Kumar	M/s Universal Electric Engineer	-do-
10.	298/15	Sohan Lal	E.E. HPPWD, Ghumarwin	-do-
11.	187/17	Mohar Singh	Dy. Dir. Primary Mandi	-do-
12.	58/21	Bhoop Singh	Manager Indane Gas Mandi	-do-
13.	43/19	Joginder Singh	M/s Saini Techno Construct	30-04-2025
14.	385/16	Ram Jeet	The E.E. HPPWD, Killar	30-04-2025

By order,

PRIYANKA BASU INGTY, IAS,
Secretary (Lab. Emp. & O.P.).

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 95/2018
Date of Institution : 02-11-2018
Date of Decision : 05-04-2025

Shri Roop Chand s/o Shri Ruwalu Ram, r/o Village & P.O. Gopalpur, Tehsil Sarkaghat, District Mandi, H.P. ..*Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
..*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, Ld. AR
: Sh. Vijay Kaundal, Ld. Adv.

For Respondent : Sh. B.C. Katoch, Ld. Dy. D.A.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner:

"Whether termination of daily/bill basis services of Shri Roop Chand s/o Shri Ruwalu Ram, r/o Village & P.O. Gopalpur, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* August, 2015 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that petitioner was engaged by respondent on daily wage basis on muster roll as forest worker without any appointment letter *w.e.f.* 1.2.2013 and he continuously worked under supervision of Range Officer Sarkaghat till 15.9.2016 but without any breaks. He continued to work and completed 240 days of work and was hence covered under Section 25-B of the Industrial Disputes Act, 1947. It is alleged that the services of petitioner were terminated by respondent *w.e.f.* August, 2016 without any notice, charge-sheet and retrenchment compensation. The respondent did not follow the principle of natural justice nor the procedure for retrenchment/termination was followed. He had completed 240 days of work from 2013 to 2016 in each calendar month and last 12 months preceding the date of his alleged termination. The work of the petitioner was upto the mark and satisfactory. He did not give any chance to respondent for any misconduct. During the period 1.2.2013 to 15.9.2016 while the petitioner continued to work and received payment from the department made voucher for some time in the name of Shri Rakesh Kumar s/o Sh. Ruwalu Ram, r/o Village Matheri, P.O. Gopalpur and Roop Singh s/o Shri Ruwalu Ram, r/o VPO Gopalpur as well as Smt. Bandna Devi w/o Shri Roop Chand whereas the petitioner found information under RTI from Secretary Gram Panchayat Jukain that as per register of parivar record in Gram Panchayat, Jukain the name of Shri Rakesh Kumar s/o Shri Rolu Ram, Village Matehri, Tehsil Sarkaghat, District Mandi. No such above man was entered in the Gram Panchayat Matehri. The petitioner also received the information under RTI from the office of Gram Panchyat Jukain no such person with name Bandna Devi w/o Shri Rakesh Kumar, r/o Village Matheri, P.O. Gopalpur, Tehsil Sarkaghat, District Mandi and as per information supplied by the panchayat Secretary no such person was registered in the said village. The petitioner had also required information from RTI regarding all the above named persons from the office of Secretary Gram Panchyat Jukain for the period from 2013 and 2014 respectively whereas respondent has shown the payment in the bill voucher in the names of above mentioned persons for the period from 2013 despite the fact these persons have never worked under Range Officer Sarkaghat. According to petitioner the payment shown in the name of above persons had deprived the fundamental right of the petitioner regarding 240 days continuous service. It is alleged by the petitioner that persons junior to him Shri Ajay Kumar s/o Sh. Braham Das and Shri Maklesh

Kumar s/o Shri Ratto Ram have been retained by respondent and thus the respondent violated the provisions of Section 25-G of the Industrial Disputes Act. After the termination of the services of the petitioner Shri Kashmiri Lal s/o Shri Luharu Ram, r/o Village Chimba Balh, P.O. Rissa, Tehsil Sarkaghat, District Mandi, H.P. was engaged in place of petitioner but the petitioner was not given an opportunity of re-employment thus the respondent violated of Section 25 Clause H of the Industrial Disputes Act. The petitioner made representations dated 3.10.2016 and 24.9.2016 however representations of the petitioner were not considered by the respondent. The petitioner has alleged that his services have been terminated in violation of the provisions of the Industrial Disputes Act. He has prayed that his illegal verbal termination by the respondent may be held to be void and respondent be directed to reinstate the petitioner with full back wages, continuity of service, seniority and all other consequential benefits.

3. In reply to the claim petition preliminary objections have been raised *qua* maintainability, *locus standi* and suppression of material facts. On merits, it is asserted that the petitioner was not a daily wage worker of respondent department but merely a casual worker who was given the work of raising and maintenance of the nursery in Sarkaghat Forest Range on bill/contract basis. In accordance with the instructions given in letter No.Ft.A-1/87(ALM)/Contract dated 18.10.2007 the daily wage worker could only be engaged after approval of the competent authority. The petitioner's services were never retrenched or terminated by the department as he was casual worker working on contract/bill basis. The details of bills by means which payment has made to the petitioner from the year 2013 to 2016 has also been done on contract basis. It is denied that the petitioner has completed 240 days of work in any calendar year. The petitioner according to respondent was engaged by Forest Range Guard, Sarkaghat Beat at Sarkaghat and his payment was made on bill basis. The bills were made on sanctioned schedule of rates as prescribed by the department. Smt. Vandna Devi was also engaged as forest casual labour as was made payment as per department schedule rate. She worked as casual labourer in nursery Sarkaghat and paid remuneration by way of bills. These bills are signed by Vandna Devi and onetime payment for the month of April, 2016 was paid to the petitioner being her husband and entry was made in the proxy register. The respondent has denied that they violated any provisions of the Industrial Disputes Act since the petitioner according to them merely casual worker on contract/bill basis. It is further submitted that after July, 2016 the petitioner did not turn up for work at Range office Sarkaghat. Respondent has not denied that the petitioner had represented to Range Officer Sarkaghat *vide* representation dated 24.9.2016 and 1.4.2016. It is further asserted that petitioner had left the work of Sarkaghat nursery after 31.7.2016 without any reason and did not turn up to do the work thus respondent had deployed a daily wage worker for the remaining works. Subsequently representation could not be considered as there was no work available in the department. Range Officer Sarkaghat again called the petitioner to work on bill/contract basis of approval schedule rate *vide* letter dated 5.7.2017 and 15.7.2017. However petitioner did not turn up for the work. According to respondent they have not violated any provisions of the Industrial Disputes Act and it is prayed that the claim deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of services of petitioner *w.e.f.* August, 2016 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is/was illegal and unjustified as alleged? ...OPP.

2. If issue No.1 is proved in affirmative, to what amount of back wages, seniority, past service benefits and compensation the petitioner is entitled to from the above employer? ...OPP

3. Whether the petition is not maintainable? ...OPR

4. Whether the petitioner has no *locus standi* to file the present claim petition? ...OPR

5. Whether the petitioner has suppressed true and material facts from the Court and not approached with clean hands, as alleged. If so, its effect? ...OPR

Relief.

6. The petitioner in order to prove his case has produced on record his affidavit Ext.PW1/A wherein he has reiterated the facts stated in the claim petition. He also produced on record copies of bills, quotations, applications and affidavits Ext. PW/1A to Ext. PW1/A6. He has also examined Shri Narender Kumar, Jr. Assistant, o/o the Labour Officer, Mandi as PW2 who produced on record various copies of bills Ext. PW2/A to Ext. PW2/S.

7. Respondent on the other hand has examined Shri Subhash Chand Prashar, HPFS, Divisional Forest Officer by way of affidavit Ext. RW1/A wherein he has reiterated the facts mentioned in the reply and has also produced on record copy of letter dated 18.10.2007 Ext. RW1/B, copy of letter dated 28.2.2017 Ext. RW1/C, copy of letter dated 5.7.2017 Ext. RW1/D and copy of report dated 16.7.2017 Ext. RW1/E.

8. I have heard the learned AR/Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Partly Yes

Issue No. 2 : Decided accordingly.

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

Relief. : Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. The petitioner has stated in his affidavit that he was engaged on daily wage basis as forest worker on muster roll basis *w.e.f.* 1.2.2013 and he continued to work under supervision of forest range officer Sarkaghat till August, 2016. He has asserted that he had completed 240 days of work in each calendar year thus his services fall under the definition of continuous service for the purpose of Section 25-B of the Industrial Disputes Act. RW1 Shri Subhash Chand Prashar, Divisional Forest Officer has however alleged that the petitioner has worked as casual worker for raising and maintenance of nursery in Sarkaghat forest range on bill basis/contract basis. He denied that the petitioner worked from 1.2.2013 to August, 2016 but asserted that petitioner worked

intermittently on bill basis subject to availability of work and funds. The details of payment received by petitioner from April, 2013 to July, 2016 have been produced on record. The bills Ext. PW2/A to Ext. PW2/S are also proved.

11. Petitioner has asserted that he was appointed as daily wage worker and in his cross-examination a suggestion is made on behalf of respondent that on 1.2.2013 petitioner worked on muster roll basis which is replied by the petitioner in affirmative.

12. Learned AR/Counsel for the petitioner has argued that the respondent had used the services of the petitioner for maximum number of days in a year but merely to avoid service benefits, the payment is shown to have been made by way of bills. Learned Counsel for the petitioner has relied upon the decision of the Hon'ble High Court of H.P. in **Ram Singh vs. State of Himachal Pradesh and others in CWP No.789 of 2024, decided on 4.7.2024** has observed in para nos. 5 and 6 as follows:—

> "5. It is not in dispute that the petitioner is serving with the respondents-Department since 2015 continuously by putting in more than 240 days in each calendar. It appears that in order to deny such kind of workmen, the benefits of regularization, respondent-State has come with the nomenclature of "bill basis" but, fact of the matter still remains that be it a daily wager or a bill basis worker, he is serving the Department regularly putting in more than 240 days in each calendar.
>
> 6. This Court of the considered view that the distinction, which is now being created by the respondents- Department between a daily wage worker and a bill base worker is violative of Article 14 of the Constitution of India. Be it a daily wage worker or a bill base worker, he is rendering the same service to the Department. Therefore, in the absence of their being any intelligible differentia between a daily wage worker and bill base worker, the classification that has been made by the Department cannot pass the touch stone of Article 14 of the Constitution of India".

13. It is also submitted by the learned AR/Counsel for the petitioner that work of the respondent was not seasonal in nature. It is pertinent to mention that according to respondent RW1 Shri Subhash Chand Prashar the petitioner was casual labour for raising and maintenance of nursery in Sarkaghat forest range. Though he mentioned that petitioner worked intermittently on bill basis subject to availability of work and funds but he admits in his cross-examination that there is no notification of the Government which declared the work of forest department as seasonal in nature. The bills and the record of payment made by department show similar nature of work was being performed not only in a particular season but during different months of year not confined to particular part of the year. It is also important to peruse cross-examination of the petitioner by learned Deputy District Attorney wherein suggestion has been made to the effect that petitioner had worked for whole year and to this suggestion also the petitioner has assented. The document i.e. bills produced in the case file also indicate that petitioner had worked for different months of the year and do not point towards work only for particular season. As pointed out by the learned counsel/AR for the petitioner, certain bills are raised in the name of Bandana Devi w/o Shri Roop Chand however Smt. Bandna Devi w/o petitioner in her affidavit Ext. PW1/G has denied that she has worked with the forest department from 2013 to 2016. A careful perusal of the report of Panchayat Secretary received by way of RTI by the petitioner Ext. PW1/Q, Ext. PW1/T, Ext. PW1/Y and Ext.PW1/A2 to Ext.PW1/A6 show that the persons in whose name bills have been issued are non resident of address given in the bills. This implies either the bills were issued in the name of fake person or the department had not verified the actual address of so called petty contractor in whose name the bills were issued. This fact also strengthen the arguments of the petitioner that the bills were merely camouflage either to suppress the number of mandays to

prevent the petitioner from continuing for the requisite period of work which would entitled him for the benefits under the Industrial Disputes Act. In the light of above evidence it is necessary to observe that as per suggestion made by learned Dy. D.A., the petitioner has confirmed that he worked for whole year with the respondent. The suppression of mandays coupled with suspicion qua authenticity of bills leads this court to believe that petitioner was working with the respondent for the whole year and completed 240 days continuous in each calendar year of his services.

14. Though it is submitted on behalf of the respondent that vide administrative directions they were not deploying daily wage worker however it is mentioned in the reply itself that the petitioner had left the work and thereafter the work was awarded on daily wage basis for the purpose of its completion. It is submitted on behalf of respondent that certain letters were issued to the petitioner in the year 2017 to complete the work available with them however the petitioner had not responded. Though these letters have been produced on the case file however there is no evidence to the effect that the letters were received by the petitioner. Moreover it is the admitted case of the petitioner that he had made representations to the respondent in the year 2016 in the month of March and September. Thus the contention of the respondent that the petitioner himself had wilfully left the work is not sustainable. Overall circumstances which have been brought forward by way of evidence clearly point towards the fact that petitioner had been working continuously with the respondent having completed statutory period of service of 12 months preceding the date of his disengagement. Under the provisions of the Industrial Disputes Act there is no distinction made out qua work done on contract basis and the work on bill basis for the purpose of benefits of Sections 25-F, 25-G and 25-H. Hence it is established that respondent while dispensing with the services of the petitioner had violated the provisions of Section 25 Clause F of the Industrial Disputes Act. No specific evidence regarding the violation of Section 25 Clause G and H could be produced by way of oral and documentary evidence hence issue no.1 is partly decided in the favour of the petitioner.

Issue No. 2

15. The petitioner has proved from the evidence produced on the case file that his continuous services was disengaged by the respondent without compliance of mandatory provisions of Section 25 Clause F of the Industrial Disputes Act, 1947. Hence petitioner is held entitled for reinstatement on daily wage basis from the date of his disengagement. In addition to it he is also entitled compensation to the tune of Rs.50,000/- in lieu of back wages as well as seniority and continuity in service from the date of his initial engagement i.e. 1.2.2013. Hence this issue is decided accordingly.

Issues No. 3, 4 and 5

16. The onus of proving these issues was on the respondent. The evidence on the case file clearly suggests that petitioner had worked continuously with the respondent. Respondent has not produced any evidence to show that petitioner has suppressed material facts from the court. Hence the claim petition is maintainable and issues no. 3,4 and 5 are decided in the favour of the petitioner.

RELIEF

17. In view of my discussion on the issues no. 1 to 5 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled to reinstatement on daily wage basis from the date of his disengagement. In addition to it he is also entitled compensation to the tune of Rs.50,000/- in lieu of back wages as well as seniority and continuity in service from the date of his initial engagement *i.e.* from 1.2.2013. Parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 5th day of April, 2025.

Sd/-
(PARVEEN CHAUHAN)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)

Ref No. : 84/2023
Date of Institution : 12-9-2023
Date of Decision : 07-04-2025

Shri Komal Chand s/o Shri Bhup Singh, r/o Village Obra, P.O. Kotmorse, Tehsil Sadar, District Mandi, H.P. ..*Petitioner.*

Versus

1. The Executive Engineer, I&PH Division, Mandi, H.P. (Principal Employer)

2. Shri Pratap Singh, r/o Village Ghanghal, P.O. Mahadev, Tehsil Sunder Nagar, District Mandi, H.P. (Contractor)

3. Shri Dharam Pal, r/o VPO Chanden, P.O. Kot Morse, Tehsil Sadar, District Mandi, H.P. (Contractor)

4. Shri Kuldeep Singh, r/o VPO Pandoh, Tehsil Sadar, District Mandi, H.P. (Contractor)

..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Petitioner in person
For Respondent No.1 : Sh. Khem Raj Thakur, Ld. ADA
For Respondents No. 2 to 4 : None for respondents No. 2 to 4

AWARD

The reference received by this Court for adjudication from the appropriate Government/ Deputy Labour Commissioner, H.P., the terms of reference are as under:—

"Whether the termination of services of Komal Chand s/o Shri Bhup Singh, r/o Village Obra, P.O. Kotmorse, Tehsil Sadar, District Mandi, H.P. by (i) the Executive Engineer, I&PH Division, Mandi, District Mandi, H.P. (Principal Employer) (ii) Shri Pratap Singh, r/o

Village Ghanghal, P.O. Mahadev, Tehsil Sunder Nagar, District Mandi, H.P. (Contractor) (iii) Shri Dharam Pal, r/o Village Chandeh, P.O. Kot Morse, Tehsil Sadar, District Mandi, H.P. (Contractor), (iv) Shri Kuldeep Singh, r/o V.P.O. Pandoh, Tehsil Sadar, District Mandi, H.P. (Contractor) *w.e.f.* 01-07-2020, (as alleged by workman) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employers?"

2. The case is listed for appearance of the petitioner as well as respondents no.2 to 4. At this stage petitioner Shri Komal Chand has made statement before this Court wherein he has stated that he does not want to peruse with this case against the respondents and he wants to withdraw the same and it may be disposed of accordingly. In view of the statement made by the petitioner, the present reference is dismissed as withdrawn. The Parties are left to bear their costs.

3. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 7th day of April, 2025.

Sd/-
(PARVEEN CHAUHAN**),**
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P. (Camp at Mandi).

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)

Ref No. : 85/2023
Date of Institution : 12.9.2023
Date of Decision : 07.04.2025

Shri Khem Singh s/o Shri Daya Ram, r/o Village Sairi, P.O. Majhwar, Tehsil Sadar, District Mandi, H.P. ..*Petitioner.*

Versus

1. The Executive Engineer, I & PH Division, Mandi, H.P. (Principal Employer)

2. Shri Pratap Singh, r/o Village Ghanghal, P.O. Mahadev, Tehsil Sunder Nagar, District Mandi, H.P. (Contractor)

3. Shri Dharam Pal, r/o VPO Chanden, P.O. Kot Morse, Tehsil Sadar, District Mandi, H.P. (Contractor)

4. Shri Kuldeep Singh, r/o VPO Pandoh, Tehsil Sadar, District Mandi, H.P. (Contractor)

..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Petitioner in person
For Respondent No.1 : Sh. Khem Raj Thakur, Ld. ADA
For Respondents No. 2 to 4 : None for respondents No. 2 to 4

AWARD

The reference received by this Court for adjudication from the appropriate Government/ Deputy Labour Commissioner, H.P., the terms of reference are as under:—

"Whether the termination of services of Shri Khem Singh s/o Shri Daya Ram, r/o Village Sairi, P.O. Majhwar, Tehsil Sadar, District Mandi, H.P. by (i) the Executive Engineer, I&PH Division, Mandi, District Mandi, H.P. (Principal Employer) (ii) Shri Pratap Singh, r/o Village Ghanghal, P.O. Mahadev, Tehsil Sunder Nagar, District Mandi, H.P. (Contractor) (iii) Shri Dharam Pal, r/o Village Chandeh, P.O. Kot Morse, Tehsil Sadar, District Mandi, H.P. (Contractor), (iv) Shri Kuldeep Singh, r/o V.P.O. Pandoh, Tehsil Sadar, District Mandi, H.P. (Contractor) *w.e.f.* 01-07-2020, (as alleged by workman) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, compensation and past service benefits the above worker is entitled to from the above employers?"

2. The case is listed for appearance of the petitioner as well as respondents No. 2 to 4. At this stage petitioner Shri Khem Singh has appeared and made statement before this Court wherein he has stated that he does not want to peruse with this case against the respondents and he wants to withdraw the same and it may be disposed of accordingly. In view of the statement made by the petitioner, the present reference is dismissed as withdrawn. The Parties are left to bear their costs.

3. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 7th day of April, 2025.

Sd/-
(PARVEEN CHAUHAN**),**
Presiding Judge,
Labour Court-cum-IndustrialTribunal,
Kangra at Dharamshala, H.P.
(Camp at Mandi).

IN THE COURT OF SH. PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. :29/2021
Date of Institution : 23.2.2021
Date of Decision : 28.4.2025

Shri Raghuvinder Singh s/o Shri Hoshiar Singh, r/o Village Paloti, P.O. Bane Di Hatti, Tehsil Dehra, District Kangra, H.P. .. *Petitioner.*

Versus

M/s Divya Himachal Prakashan Pvt. Ltd., Head Office at Kangra-Pathankot Marg, Mataur, Tehsil & District Kangra, H.P. through its MD. .. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.D. Sharma, Ld. Adv.
For the Respondent : Sh. N.L. Kaundal, Ld. AR
: Sh. Vijay Kaundal, Ld. Adv.

AWARD

This is a claim petition under Section 2-A (2) of the Industrial Disputes Act, 1947 filed directly before this court after completion of mandatory period of 45 days of filing of dispute before the Conciliation Officer.

2. The brief facts as stated in the claim petition are that the applicant/workman was employed as IT Engineer (Technical Support) on 1.8.2008 by the management M/s. Divya Himachal Prakashan Pvt. Ltd. without appointment letter and the applicant was deputed to work in head office of respondent/management situated at Kangra-Pathankot Marg, Old Mataur, Kangra, H.P. The salary of applicant/workman was paid by the respondent management in is salary account No.65093306617 in the branch of State Bank of Patiala (now merged into SBI) branch at Kangra city. After the appointment of applicant the provident fund was not deducted by the respondent and same was started to deduct from 1.8.2010. It is asserted that the respondent management is a body corporate registered under the Companies Act, 1956 (amended as Act, 2013) having its registered office at Kangra Pathankot Road, Old Mataur, Kangra, H.P. and primary business of company is to publish and print a newspaper in the name and style of 'Divya Himachal'. The printing centre of the respondent management is also situated in the same establishment at Kangra-Pathankot Marg, Old Mataur, Kangra, HP and registered as partnership firm in the name and style of M/s Samarpan Printers and Shri Bhanu Dhamija is the Chairman-*cum*-Managing Director and Shri Anil Soni is the Director-*cum*-Editor-cum-Printer/publisher of the company and its newspaper 'Divya Himachal' and both are the proprietors/partners of the Printing Press M/s. Samarpan Printers as well as functional integrity and common control of the managements of both establishment of respondent/management. The service conditions and wages of applicant/workman were governed by The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, hereinafter referred to as the 'Governing Act' enacted by the Parliament. The applicant/workman falls under Section 2(c) and 2 (dd) of the Governing Act and defined a non-journalist newspaper employee of the concerned newspaper establishment as well as applicant/workman was also workman in terms of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is asserted that the respondent/management and printing press i.e. M/s Samarpan Printers are covered under the Governing Act and falls within the definition of Single Newspaper Establishment in terms of Section 2(d) read with Schedule of the Act, whereas Daily Divya Himachal is a Hindi daily newspaper of the respondent/management falls under Section 2b of the Governing Act. In terms of Section 14 of Governing Act the Industrial Employment (Standing Orders) Act, 1946 applicable to the respondent/management but the respondent/management not certified its standing orders in terms of Section 14 of Governing Act and in terms of the Industrial Disputes Act, 1947 the respondent/management falls within the provisions of Chapter VB and also in terms Section 2(m) of Factories Act, 1948 the respondent management falls within the definition of the factory. The Government of India, Ministry of Labour vide notification dated 24.5.2007 constituted the Wage Boards in terms of Section 9 and 13B of the Governing Act to review and determine the wages and service conditions of Newspaper Employees

including that of the applicant/workman. Thereafter the Wage Board submitted its recommendations to the Government on 31st December, 2010 and the Central Government accepted the same vide notification dated 11.11.2011 made the award enforceable subject to the decision of Hon'ble Supreme Court in writ petitions filed by the owners of newspapers against the Wage Board and its recommendations. Wage Board submitted its recommendations on 31st December, 2010 *vide* notification dated 11.11.2011 the award was made enforceable. The Hon'ble Supreme Court *vide* its judgment in ABP Pvt. Ltd. & Anr. Vs. Union of India & Ors. AIR 2014 SC 1228 dismissed the objections and petition against Majithia Wage Board and its recommendations and the Newspaper Establishment were directed to implement the same *w.e.f.* 11.11.2011. It was also directed that arrears be paid upto March, 2014. It is alleged that respondent management did not implement recommendations of Majithia Wage Board and did not revise wage and interim relief of the employees who were continuously demanding the revised wages and service conditions. In the contempt petition (Civil) no. 411 of 2014 reported in Avishek Raja & Ors. vs. Sanjay Gupta, AIR 2017 SC 2955, the Hon'ble Supreme Court further passed directions and clarifications on some legal issues in this judgment on 19.6.2017. In accordance with this judgment the newspaper establishment was under obligation to pay the dues to the confirm employees along-with contractual employees in terms and directions passed in previous judgment dated 7.2.2014.

It is again reiterated by claimant that he was not being paid his dues and wages in accordance with the Wage Board notification and the management was disobeying the orders of Hon'ble Supreme Court. It is prayed that the act of the management terminating the services of petitioner be held to be illegal unjust and void. Petitioner may be reinstated in service from the day from he was ousted from service along-with full back wages, seniority and other consequential/past service benefits. It is also prayed that petitioner be held entitled for compensation on account of act of victimization by the respondents. It is alleged that the claimant/workman was not paid his dues and wages accrued under the Wage Board Notification which was ultimately merged with the directions of judgments dated 7.2.2014 and 19.6.2017 passed by the Hon'ble Supreme Court. The employees including the claimant/petitioner had filed a contempt before Hon'ble Supreme Court wherein the Hon'ble Supreme Court directed and clarifications on some legal issues in its judgment on 19.6.2017. The claimant/workman had demanding the dues since judgment dated 7.2.2014 however the respondent had made excuses one after the other and now refused to pay the same to the claimant and he was pressurized for forced resignation. The management started victimization all employees inclusive of claimant/workman who demanded their legitimate dues. The victimization was resorted to by forced resignation of large number of employees but the claimant/workman had denied giving forced resignation. It is asserted that the claimant/workman along with other aggrieved employees had filed a complaint with regard to forced resignation of employees by the management before Additional Chief Secretary (Lab. & Emp.) of H.P. Government. The Labour Commissioner of H.P. and Labour Inspector, Dharamshala vide letters dated 10.7.2019, 14.7.2019 and 21.7.2019 respectively. Thereafter Principal Secretary (Lab. & Emp.) of H.P. Govt. Had issued the directions to the Labour Commissioner of H.P. for necessary action on it vide letter dated 29.7.2019 and 19.8.2019 respectively. Labour Commissioner through Deputy Labour Commissioner had issued directions to the Labour Office Dharamshala vide letter dated 1.8.019 and 23.8.2019. As per the directions issued by the office of Labour Commissioner dated 1.8.2019 the claimant/workman had filed claim of his due arrears of difference of old and revised wages along-with arrears of interim relief and other allowances before the designated authority under Section 17(1) of the Governing Act. Specifically prohibited by the express provision of Section 16-A of the Working Journalist and Other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 for victimization of employees for demanding their dues from the management but the management continued to take vindictive action against the employees including the claimant/workman in the present matter. Management disregarded the statutory provision by way of threatening claimant/workman to withdraw the application filed by him under Section 17(1) of the Governing Act before the designated authority-cum-Labour Officer

Dharamshala on 3.8.2019 as well as pressurized the claimant along-with other colleagues to extract the signatures on forced resignation. When the claimant had denied following the above illegal, unjust, arbitrary and unconstitutional directions of the officials of the management, the services of the claimant were terminated on 3.8.2019 by verbal/oral order *w.e.f.* 4.8.2019 along-with four colleagues namely Yash Paul Singh, Rahul Choudhary, Ashu Kumar and Vinod Kumar. It is asserted that the claimant had tried to join the duty but he was not allowed to join his duty as well as he was not allowed to enter the gate of the office at Purana Mataur (Kangra). Thereafter claimant along-with other colleagues have filed their claim under Section 17(1) of the Governing Act before the designated authority-cum-Labour Offier Zone Kangra at Dharamshala. It is asserted that after the victimization by way of pressurizing to extract the forced resignation and restrain to join the duty by the respondent/management the claimant along-with other colleagues have filed complaint before SHO, Police Station Kangra. It is asserted that on 5.8.2019 the claimant along-with four workmen had also filed applications under Section 16-A of the Governing Act against the oral/verbal termination of their services *w.e.f.* 4.8.2019. It is asserted that after knowing about the complaints of the verbal/oral termination and victimization filed by the applicant and other four colleagues, the respondent/management had planned a new conspiracy by way of issuing their malafide and back dated transfer-cum-new responsibility (promotion) orders however these malafide transfer orders were received by the claimant and other four colleagues after expiry of last date of joining at new station and these orders were clearly in violation of law of land as in absence of the appointment letter, agreement of service conditions and certified standing order the job of the applicant was not transferrable. Further the claimant had received this letter on 10.8.2019 issued by HR department with signatures of Deputy Manager, HR Sh. Anand Sharma. In accordance with postal record the transfer letter was sent by register post on 5.8.2019 but deliberately the back date was mentioned on it as 3.8.2019. It is alleged that the before issuing the transfer letter the respondent/management had already terminated the services of the workman orally/verbally on 4.8.2019 and restrained the claimant to join his duty. On 10.8.2019 claimant/workman had sent a demand notice by speed post to the Chairman-cum-Managing Director of the respondent company regarding illegal, unjust and malafide transfer orders and the same was deliberately not received by the addressee and returned back on 22.8.2019. This demand notice was espoused by the co-workers and Newspaper Employees Union of India. It is asserted that the claimant had received a back dated letter of termination send through speed post and same was not signed by the appointing authority of respondent/management and respondent/management had given false, arbitrary, fabricated, unjust and voidable reasons to terminate the services of the claimant. It is asserted that the order of termination dated 13.8.2019 was clearly in violation of the principles of natural justice as there was no opportunity or show cause notice given to the claimant/workman. The action of the management by issuing illegal termination and malafide transfer orders was contrary to the provisions of the Industrial Employment (Standing Orders) Act, 1946 is applicable to the services of workman in terms of Section 14 of the Governing Act read with Industrial Employment (Standing Order) Himachal Pradesh Rules-1973 and Amendment Rules 1991. It is further asserted that the termination order dated 13.8.2019 was illegal and same was in violation of the provisions of Section 33 of the Industrial Disputes Act. The respondent/management had not seeking the approval of Labour Officer Dharamshala in terms of Section 33 of Industrial Disputes Act before terminating the services of the claimant as the proceedings under Section 17(1) were pending before the said authority. On 22.8.2019 the claimant had filed application/demand notice under Section 2-A of the Industrial Disputes Act before the Conciliation-cum-Labour Officer, Dharamshala and the said authority had issued notice to the respondent vide letter dated 20.9.2019 and the conciliation proceedings were initiated on 30.9.2019. The claimant/workman submitted that the illegal, arbitrary, unfair, malafide, voidable and unjust act of management by issuing firstly verbal/oral order *w.e.f.* 4.8.2019 and then written order of the termination on 13.8.2019 without any prior notice is liable to be quashed and set aside. The claimant is unemployed due to illegal and unjust act of the respondent/management and still facing financial hardships for livelihood. It is prayed that the act of the management terminating the services of petitioner be held to be illegal

unjust and void. Petitioner may be reinstated in service from the day from he was ousted from service along-with full back wages as per recommendations of Majithia Wage Board, seniority and other consequential/past service benefits along with litigation costs.

3. In reply filed on behalf of the respondent whereby preliminary objections *qua* maintainability, abuse of process of law, claimant not falling under definition of 'workman' under the Industrial Disputes Act, locus standi, resjudicata and wilful abandonment of service by the petitioner have been raised. On merits, it is admitted that the petitioner was engaged *w.e.f.* 17.3.2012 as IT Engineer (Technical Support). It is further submitted that the present application under Section 2-A of the Industrial Disputes Act, 1947, the applicant cannot be raised any issue with regard to Employees Provident Fund. It is asserted that the applicant is relied upon the list of workmen provided by the respondent in another case reference no.203/2017 and designation of the applicant is mentioned as Executive. It is denied that there was functional integrality and common control in the managements of M/s Divya Himachal Prakashan Pvt. Ltd. and M/s Samarpan Printers. It is asserted that the same person can be an owner of two different establishments but does not mean that there is a functional integrality and common control in the managements of both establishments. It is further asserted that Divya Himachal Prakashan Pvt. Ltd. and Samarpan Printers are two different establishment having different registration number, EPF Code number, PAN number, GST number etc. It is asserted that the applicant is not fall under the definition of workman within the meaning of Section 2(S) of the Industrial Disputes Act, 1947 as such the applicant was drawing more than Rs.10000/- per month at the time of this promotions. It is asserted that the respondent establishment is not fall under the definition of factory as defined under the Factory Act, 1948. It is further asserted that the Labour Department Himachal Pradesh had not covered the respondent establishment under the Factory Act, 1948. It is further asserted that the Standing Orders had already been submitted before the competent authority for certification and the same is still pending for certification. Moreover the Model Standing Order Act, 1945 is applicable to the respondent. It is further mentioned that contents of the petition regarding the Majithia Wage Board compliance do not have any relevancy in the light of the reference which is referred for adjudication to this court. Moreover, regarding Majithia Wage Board now the petitioner had filed separate claim petition which is pending before this court. It is denied that the applicant was terminated along-with others S/Sh. Rahul Chaudhary, Yashpal Singh, Ashu Kumar and Vinod Kumar but the true fact it that all the above named employees as well as applicant had been promoted and transferred to new place of posting and promotion letters were mailed in their mail account and also sent in their home address through registered post but all have not joined at their new place of posting and abandoned the job. It is denied that the respondent management victimized the applicant and forced him to submit his resignation. It is asserted that the police had not conducted any investigation in this regard against the respondent management till date. It is further asserted that fake and false stories have created by the authorized representative of the applicant with an intention to create pressure upon the respondent management to pay Majithia Wage Board. It is asserted that the respondent management had not made any pressure upon the applicant to give his resignation from service. The applicant had written totally false story in the present petition whereas the true fact is that the applicant voluntary given his option under paragraph 2(J) of the Majithia Wage Board recommendations to retain his the then existing wages/emoluments. The management had also not terminated the services of applicant rather the management had given promotion to the applicant as circulation representative in Circulation Department *w.e.f.* 3.8.2019 in new place of posting at Chamba Office and also given him increment of Rs.1339/- per month plus Rs.1500/- per month as station allowance and asked him to join new station on or before 7.8.2019. The promotion letter was also emailed to the claimant in his email Id i.e. sonukoundle@gmail.com as filled/submitted by him at the time of his enrolment/joining but the applicant had not received the promotion letter and left the office and also not given any response to the mail. Thereafter the promotion letter was sent to the applicant vide registered letter dated 5.8.2019 under receipt no.EE790823951IN in his home address but again no response from the

applicant. Thereafter the management had given him one more chance to join at Chamba office on or before 12.8.2019 and mail in this regard was sent in his email Id which was wilful negligence, disobedience and sheer indiscipline, therefore the applicant had relieved from service with immediate effect *w.e.f.* 13.8.2019 and information in this regard was sent in his email id as well as hard copy of the same was sent to him through registered post on 16.8.2019 vide receipt no.792845637IN. It is asserted that the management had never terminated the services of applicant, rather given him promotion vide promotion letter dated 3.8.2019 and if the applicant was ready to accept his promotion and joining at new place of posting at Recongpeo the management was also ready to take him back in service with continuity of service but without back wages in according with the principle of No work no pay. It is asserted that the respondent has not mentioned back date in promotion letter as 3.8.2019 but the true fact is that the said promotion letter was drafted in the eve of 3.8.2019 and could not be sent to the applicant. On 4.8.2019 it was Sunday and the promotion letter was posted to applicant on 5.8.2019. It is further asserted that due to holiday of second Saturday on 14.8.2019 and Sunday on 15.8.2019 the relieving letter was sent through post on 16.8.2019. It is further asserted that the information regarding relieving from service was sent to the applicant through mail dated 13.8.2019 and the same was signed by the then Dy. Manager (HR) Mr. Anand Sharma. It is asserted that the applicant had not accepted the promotion order and not join at Chamba office without any communication in writing and this act of the applicant was treated as wilful negligence, disobedience and sheer indiscipline, therefore the applicant was relieved from service with immediate effect *w.e.f.* 13.8.2019 and information in this regard was sent in his email id as well as hard copy of the same was sent through registered post dated 16.8.2019 *vide* receipt no.EE7928456371IN. It is further submitted that the applicant possesses ample cultivated land and earning his livelihood as an agriculturist. Other averments and allegations made in the claim petition were denied and it is prayed that the claim deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.

2. If issue No.1 is proved in affirmative to what relief the petitioner is entitled to? ..OPP.

3. Whether the petitioner is not a workman for the purpose of this reference. If yes its effect? ..OPR.

4. Whether the petitioner has abandoned the services in the manner as alleged. If yes its effect? ..OPR.

Relief.

6. In order to prove his case the petitioner has produced on record his affidavit Ext. PW1/A wherein he reiterated the fact stated in the petition. He also produced on record copy of letter dated 10th July, 2019 Ext. PW1/B, copy of another letter dated 29.7.2019 Ext. PW1/C, copy of letter dated 1st August, 2019 Ext. PW1/D, copy of complaint dated 3rd August, 2019 Ext. PW1/E, copy of FIR dated 3.8.2019 Ext. PW1/F and envelop Ext. PW1/G. The petitioner has also examined Shri Rahul Chaudhary as PW2 by way of affidavit Ext. PW2/A wherein he has stated that the petitioner Ashu Kumar, Raghuvinder, Yashpal, Vinod, Jitender, Purshotam etc. were posted in Divya Himachal Prakashan.

7. Respondent has examined Shri Hitesh Kotia s/o Shri R.S. Kotia by way of affidavit Ext. RW1/A wherein he reiterated the facts mentioned in the reply. He also produced on record copy of reply dated 30.9.2019 Ext. RW1/B, copy of email dated 3.8.2019 Ext. RW1/C, copy of email dated 8.8.2019 Ext. RW1/D, copy of email dated 13.8.2019 Ext. RW1/E, copy of letter dated 3.8.2019 Ext. RW1/F, copy of letter dated 13.8.2019 Ext. RW1/G, copy of attendance record of employees Ext. RW1/H (14 pages), copy of letter dated 27.6.2018 Ext. RW1/J, copy of letter dated 26.12.2019 Ext. RW1/K, copy of letter dated 19.5.2021 Ext. RW1/L, copy of receipt dated 22.5.2021 Ext. RW1/M and copy of resolution dated 11.5.2015 Ext. RW1/N.

8. I have heard the learned Counsel for the petitioner as well as learned AR/Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Yes
Relief.	: Claim petition is dismissed allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1, 3 and 4

10. All these issues are interlinked and interconnected and taken up together for the sake of evidence and avoid repetition of evidence.

11. Certain facts of the present claim are not disputed i.e. petitioner was employed as I.T. Engineer (Technical Support) *w.e.f.* 1.8.2008. The petitioner has asserted that he falls within the definition of workman which fact is denied by the respondent stating that the salary of the petitioner was Rs.10000/- or above. On the other hand the respondent asserted that the petitioner was engaged as Sr. Tech. Support Engineer *w.e.f.* 1.8.2008. The dispute between the petitioner and respondent is however governed under the Industrial Disputes Act as well as Working Journalist and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. The petitioner falls under the category of non journalist newspaper is covered under Section 9 to 16 of the Special Act for seeking the relief under the Industrial Disputes Act.

12. Document Ext. PW1/B dated 10.7.2019 is the complaint made by the petitioner and his colleagues against the respondent for non compliance of recommendations of Majithia Wage Board, alleging that the respondent were seeking forced resignation and threatening the workman with transfer on less salary and outside station. Vide Ext/ PW1/C Principal Secretary, Labour & Employment had directed the Labour Commissioner to take necessary action on the complaint made by petitioner and others who further directed the Labour Officer Dharamshala to investigate and take the legal action on the said complaint vide Ext. PW1/D. These documents reflect that petitioner and others had made complaint to the authorities regarding non implementation of Majithia Wage Board recommendations and other oppressive measures by the respondent against petitioner and others in July, 2019.

13. On 3.8.2019 the complaint was made to the police authority and that petitioner and others were being harassed and not allowed to enter the company premises by the respondent

management. The contention of the respondent is however based on the denial of allegations made to the labour authorities and it is asserted that management had not terminated the services of applicant/claimant but had rather given promotion to the applicant petitioner as Digital Media Production Department *w.e.f.* 3.8.2019 at a new place of posting Manali with increment of Rs.1339/- per month plus Rs.1500/- per month as station allowance. The mail *qua* promotion was sent to the petitioner on 3.8.2019 at his official e-mail address i.e. sonukoundle@gmail.com. The petitioner Raghuvinder Singh has admitted in his cross-examination that on 3.8.2019 when he was given a new responsibility and transferred to Chamba. He alleges that he was sent in Digital Production Media which was not his work. He also alleges that there was transfer to another company. Except the statement of petitioner there was no other oral or documentary evidence to prove that the petitioner had been transferred to a different company and different establishment. Petitioner admits that his email is sonukoundle@gmail.com. and he also admits that email Ext. R1 was sent to him which he saw next evening. He admits that he was asked to join at Chamba till 12.8.2019 but he did not join. He admits that on 3.8.2019 he received email Ext. R2. He states that he has refused promotion but also admits that he had not replied in writing to emails Ext. R1, Ext. R2 and Ext. R3. He never conveyed his intention to forgo promotion in writing. He admits that he had not supplied copy of correspondence with labour authority to respondent. He admits that even after reply to the claim petition he had not join at Chamba. During the course of his cross-examination he expressed his willingness to join at Chamba. The above statement made by the petitioner during the course of his cross-examination would reveal that petitioner had not made any efforts to respond to various notices qua transfer despite knowledge. It is also clear that he never communicated intention to his forgo promotion in writing. He had not joined at the place of his transfer and did not raise any written objection which was communicated to the respondent regarding his transfer. He only preferred to raise demand notice in this regard. The petitioner had sent a demand notice through speed post to the respondent company on 10.8.2019. This demand is also with regard to defective, arbitrary and malafide transfer only.

14. The present dispute is with respect to illegal termination of the petitioner by the respondent but respondents have alleged voluntary abandonment of the work and that merely relieving the petitioner consequent to transfer is not a dispute under Sections 25-F and 25-N of the Industrial Disputes Act, 1947.

15. Hon'ble High Court of Himachal Pradesh in **Ramesh Kumar vs. Food Corporation of India, 2013 LLR 709** has held in para no.11 and 14 as follows:—

> "In view of the above, the legal position on the issue of transfer can be summarized as under:-
>
> 1) Transfer is a condition of service.
>
> 2) It does not adversely affect the status or emoluments or seniority of the employee.
>
> 3) The employee has no vested right to get a posting at a particular place or can choose to serve at a particular place for a particular tenure.
>
> 4) It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.
>
> 5) Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.

6) There is a very little scope of judicial review by the Court / Tribunal against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or mala fides is established.

7) In case of mala fides, the employee has to make specific averments and should prove the same by adducing implacable evidence.

8) The person against whom allegation of male fide is alleged is to be impleaded as a party by name.

9) Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Departmental personnel.

10) The Court does not have a power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children as consideration of this issues fall within the exclusive domain of the employer.

11) If the transfer order is made in mid-academic session of the children of the employee, the Court / Tribunal cannot interfere. It is for the employer to consider such a personal grievance".

"14. The Hon'ble Supreme Court in State of Haryana & Ors., versus Kashmir Singh & Anr., (2010) 13 SCC 306, has observed that the Court should not interfere with purely administrative matters except where absolutely it is necessary on account of violation of any fundamental or other legal right. The Hon'ble Supreme Court has also reiterated the law in Registrar General, High Court of Judicature of Madras versus R.Perachi & Anr., (2011) 12 SCC 137, by observing that transfer is an incident of service and if transfer is made on administrative grounds and judicial review is limited and the High Court has not to interfere with the transfer lightly".

16. The Hon'ble High Court of H.P. in **State of H.P. & Ors. vs. Presiding Judge & Anr., 2006 LLR 1020** has held in paras 18 and 23 as follows:—

"18. To attract Section 25-F of the Act, termination of the services of an employee must be by some act of the employer. If there is no termination of the services by the employer out of his own volition but the disengagement or discharge of the employee is caused on account of some act or event over which the employer has no control, then in my view, it cannot be said to be retrenchment of services of a workman within the meaning of Section 2(oo) of the Act. The essence of retrenchment is the termination of workman's services by some act on the part of the employer. In the instant case, the employer is not expected to wait for two years for workman to return who had also sent notice at her admittedly known address.

23. In the present case, as noticed above, the workman remained absent without any information to the employer or communicating any reasons for her absence and suddenly wanted to join her duties after two years with a certificate that she was advised to live with her husband during this period. In my view, voluntary absence which amounts to voluntary abandonment and voluntary retirement from the work would not amount to retrenchment within the meaning, of Section 2(oo) of the Act and therefore, Section 25-F of the Act is not attracted in the facts and circumstances of this case".

17. Hon'ble High Court of Delhi in **Shri Gian Chand versus Secretary (Labour) Delhi Administration** in **C.W. No.2339/93 & C.M. 3767/93** has held that *failure of an employee to comply with the transfer order does not amount* to termination but abandonment. The intention has to be inferred from the act and conduct of the party and as a question of fact.

18. In the light of above precedent it is important to observe that during the cross-examination of the petitioner he has revealed that he was not interested to get promotion or join a new place of posting. He despite notice to transfer order did not convey his intention not to join at new place of posting nor his intention to forgo the promotion. He alleges that he was not allowed to enter into the company after 3.8.2019 but also stated that he worked in the company till 13.8.2019. According to him his presence was marked in the company till 6.8.2019. He has stated that he replied to notices issued by the company but no such document could be proved by way of evidence before the court. This conduct of the petitioner points the fact of complete abandonment of his job after 3.8.2019. The industrial dispute was raised on 10.8.2019 but no reason for joining of new place of posting was conveyed. He has not raised any objection with the respondents alleging change of service condition. The Hon'ble Supreme Court in **The Tamil Nadu Agricultural University & Anr. vs. R. AGILA ETC.** in **Special Leave of Appeal (Civil) Nos. 13070-13075 of 2022** has held in paras no.3,4 and 7 as follows:-

> "3. It is established as a part of service law jurisprudence that transfer is an exigency of service. As such, when a person becomes an employee of the Government, the incidence of transfer becomes inherent in the terms of service unless it is specially barred under certain provisions governing conditions of service.
>
> 4. Under such terms and conditions of service, an employee has no right to remain absent or refuse to join the new place of transfer once relieved from their current place of posting. The employee is entitled to avail all available remedies for redressal of grievances, but it does not entitle them to not comply with the transfer orders. The employee is well within his rights to join the transferred place of posting and still continue to avail the remedies available under the law for redressal of his grievances against the transfer.
>
> 7. We also find it relevant to quote here a judgment of this Court on the same subject in Tushar D. Bhatt v. State of Gujarat, (2009) 11 SCC 678
>
> "16. The legal position has been crystallised in a number of judgments that transfer is an incidence of service and transfer are made according to administrative exigencies.
>
> 17. In the instant case, in the entire tenure of more than 18 years, the appellant was only transferred twice. The appellant's transfer order cannot be termed as mala fide. The appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorisedly absent from official duties from 11-10-1999 to 27.4.2000 i.e. more than six months. In the interest of discipline of any institution or organization such an approach and attitude of the employees cannot be countenanced.
>
> 18. In Gujarat Electricity Board v. Atmaram Sungomal Poshani [(1989) 2 SCC 602: 1989 SCC (L&S) 393: (1989) 10 ATC 396: AIR 1989 SC 1433] this Court had an occasion to examine the case of almost similar nature. This Court observed as under:
>
> "4. ....Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply

with the order but if there be genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the public servant concerned must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place of the other".....

19. Hon'ble Supreme Court in **U.P. Singh vs. Punjab National Bank, 2024 LLR 119** has held in para 10 as follows:—

"10. A person aggrieved by the order of transfer cannot sit at home and decide on his own that the order is illegal or erroneous and he will not comply with the same. If the workman had any grievance, he could have availed of his remedy available against the same; otherwise, he was duty-bound to comply with the same. Failure to avail of any remedy also would mean that he had accepted the order and was duty-bound to comply with the same. At a later stage, he could not take a plea that the order being erroneous, no consequence would follow for its non-compliance".

20. The Hon'ble High Court of H.P. in **Smt. Rani Sharma and Others vs. State of Himachal Pradesh and Another, 2019 LLR 856** has held in paras 32 to 35 as follows:—

"32. Coming back to the facts of this case. As already discussed above, it is not in dispute that the case of the workmen was not taken up with the appropriate Government either by appreciable number of employees or by the Management. In other words, the cause of the workmen was not espoused either by number of workmen or by the Management. The cause was independently espoused by both the workmen in their individual capacity before the appropriate Government. Such dispute, which was individually raised by the workmen feeling aggrieved by the issuance of the transfer order, by no stretch of imagination, could have been referred to Industrial Tribunal-cum-Labour Court by the appropriate Government under Section 10 of the Industrial Disputes Act. That being so, adjudication upon the said Reference by the learned Labour Court, which stands assailed by way of the writ petition filed by the employer, is per se void ab initio and not sustainable in the eyes of law.

33. In order to give an opportunity to the learned Counsel for the workman to demonstrate that an Industrial Dispute qua transfer orders could have been individually espoused by them under the Industrial Disputes Act, sufficient time was given, but he could not substantiate in law that such a dispute could have been individually raised by them and subsequently referred by the appropriate government by way of a Reference for adjudication to the Industrial Tribunal-cum-Labour Court.

34. Thus, as it is apparent that no individual Industrial Dispute could have been raised by the workmen against the transfer order, the Reference made by the appropriate Government on the demand notice of the workmen was bad in law and not in consonance with the provisions of Section 2(k) of the Industrial Disputes Act. As a natural corollary, the adjudication of the said Reference by the learned Tribunal by

way of award dated 04.08.2010 in Reference No. 36 of 2006 is also thus void *ab initio* and not sustainable in law.

35. Accordingly in view of discussion held herein-above, both the Reference made by the appropriate Government as well as the award dated 04.08.2010 passed in Reference No. 36 of 2006, titled as Baldev Sharma and another vs. The Area Manager, Bata India, by learned Tribunal are quashed and set aside. Consequently, the writ petition filed by the Company, i.e. CWP No. 4993 of 2011, is allowed whereas the writ petition filed by the workmen, i.e. CWP No. 8419 of 2010, is dismissed. No orders as to costs".

21. Learned Counsel for the petitioner has vehemently argued that even if the petitioner had failed to report at new place of posting respondent did not follow due process before dispensing with the services of the petitioner hence termination of the petitioner was void and illegal.

22. The peculiar circumstances of the present case show that in order to constitute termination the intention of petitioner to continue his duties was relevant. Petitioner however did not bother to join his duty at new place of posting after which he was at liberty to raise appropriate dispute if any qua victimization by way of transfer or otherwise. He could not produce evidence qua his response if any to the various notices including relieving notice dated 13.8.2019. The pleadings of the respondent read in para no.6 page 5 of the reply as follows:—

"The management has never terminated the services of applicant rather given him promotion vide promotion letter dated 03.8.2019 and if the applicant is ready to accept his promotion and joining at new place of posting at Recongpeo the management is also ready to take him back in service with continuity of service but without back wages on the principle of '**No Work No Pay".**

23. In view of this averment the relevant notice Ext. RW1/G would not amount to termination. Petitioner has conceded unequivocally that he does not intent to join new place of posting or to avail promotion thus the intention of petitioner qua non compliance of principle of natural justice and opportunity of being heard is no more relevant in the present case. The conduct of the petitioner amounts to wilful abandonment and deliberate non compliance of transfer order from 3.8.2019 to 13.8.2019. Pertinent to observe that even being aware of his transfer the petitioner did not join his duty or raise any objection with the respondent in this regard.

24. As laid down by the Hon'ble High Court of H.P. in **Rani Sharma's case (supra)** the crux of the dispute between petitioner and respondent was transfer order and not the dismissal, discharge and retrenchment. As the petitioner has abandoned the job thus he is not entitled to any relief under Section 25 Clause F of the Industrial Disputes Act.

25. Learned counsel for the petitioner has also argued that by way of transfer and relieving order the respondent has not complied with the provisions of Section 33 Clause 1 of the Industrial Disputes Act. In view of the ongoing dispute between the parties under Section 17 Clause 1 of the Governing Act with the appropriate authority. Pertinent to mention here that there is no evidence to establish that transfer of the petitioner had caused change in his service condition or prejudiced him in any manner. On the other hand he failed to join at the relevant place of posting with no plausible excuse. In the pleadings of the present claim also there is no mention of the prejudice which has been caused to the petitioner by way of transfer or any change in service condition which would have affected him adversely. No evidence has been led in this regard. Thus the petitioner avail benefit under Section 33 Clause 1 of the Industrial Disputes Act. In view of the above discussions and the evidence which has been led before this court there does not appear to be any expressed retrenchment or intentional termination of services of the petitioner by the respondent hence issues no.1, 3 and 4 are decided in the favour of the respondent.

Issue No. 2

26. It appears from the statement of witness that there was no formal termination of the petitioner by the respondent. Respondent in reply to the claim of the petitioner has shown their willingness to allow the petitioner to join new place of posting. The petitioner has averred in the statement that he has willing to join at new place of posting. Thus nothing precludes this court to not to allow the petitioner at new place of posting. Respondent shall allow the petitioner to join at new place of posting within 15 days of the receipt of copy of award by petitioner. The question of back wages cannot be considered as petitioner has not joined his new place of posting as per transfer order and the principle of no work no pay would apply as the petitioner had not led any cogent evidence with regard to reasons for not joining at new place of posting or justify his absence. In these circumstances no benefits relief can be granted in the favour of the petitioner. Hence this issue is decided accordingly.

RELIEF

27. In view of my discussion on the issues nos. 1 to 4 above, the present claim made by the petitioner against the respondent is not maintainable and the reference is decided accordingly. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of April, 2025.

(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 27/2021
Date of Institution : 23.2.2021
Date of Decision : 28.4.2025

Shri Ashu Kumar s/o Shri Sohan Lal, r/o Village Chhoti Haler, Near Floor Mill, P.O. & Tehsil & District Kangra, H.P. ..*Petitioner.*

Versus

M/s Divya Himachal Prakashan Pvt. Ltd., Head Office at Kangra-Pathankot Marg, Mataur, Tehsil & District Kangra, H.P. through its MD. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.D. Sharma, Ld. Adv.

For the Respondent : Sh. N.L. Kaundal, Ld. AR
: Sh. Vijay Kaundal, Ld. Adv.

AWARD

This is a claim petition under Section 2-A (2) of the Industrial Disputes Act, 1947 filed directly before this court after completion of mandatory period of 45 days of filing of dispute before the Conciliation Officer.

2. The brief facts as stated in the claim petition are that the applicant/workman was employed as Executive on 17.3.2012 in Circulation Supports Department (CSD) by the management M/s. Divya Himachal Prakashan Pvt. Ltd. without appointment letter and the applicant was deputed to work in head office of respondent/management situated at Kangra-Pathankot Marg, Old Mataur, Kangra, H.P. The salary of applicant/workman was paid by the respondent management in his salary account No.65142603720 in the branch of State Bank of Patiala (now merged into SBI) branch at Kangra city. After the appointment of applicant the provident fund was not deducted by the respondent and same was started to deduct from 1.3.2015. It is asserted that the respondent management is a body corporate registered under the Companies Act, 1956 (amended as Act, 2013) having its registered office at Kangra-Pathankot Road, Old Mataur, Kangra, H.P. and primary business of company is to publish and print a newspaper in the name and style of 'Divya Himachal'. The printing centre of the respondent management is also situated in the same establishment at Kangra-Pathankot Marg, Old Mataur, Kangra, HP and registered as partnership firm in the name and style of M/s Samarpan Printers and Shri Bhanu Dhamija is the Chairman-cum-Managing Director and Shri Anil Soni is the Director-cum-Editor-cum-Printer/publisher of the company and its newspaper 'Divya Himachal' and both are the proprietors/partners of the Printing Press M/s Samarpan Printers as well as functional integrality and common control of the managements of both establishment of respondent/ management. The service conditions and wages of applicant/workman were governed by The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, hereinafter referred to as the 'Governing Act' enacted by the Parliament. It is asserted that the applicant/workman falls under Section 2(c) and 2 (dd) of the Governing Act and defined a non-journalist newspaper employee of the concerned newspaper establishment as well as applicant/workman was also workman in terms of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is asserted that the respondent/management and printing press i.e. M/s Samarpan Printers are covered under the Governing Act and falls within the definition of Single Newspaper Establishment in terms of Section 2(d) read with Schedule of the Act, whereas Daily Divya Himachal is a Hindi daily newspaper of the respondent/management falls under Section 2b of the Governing Act. In terms of Section 14 of Governing Act the Industrial Employment (Standing Orders) Act, 1946 applicable to the respondent/management but the respondent/management not certified its standing orders in terms of Section 14 of Governing Act and in terms of the Industrial Disputes Act, 1947 the respondent/management falls within the provisions of Chapter VB and also in terms Section 2(m) of Factories Act, 1948 the respondent management falls within the definition of the factory. The Government of India, Ministry of Labour vide notification dated 24.5.2007 constituted the Wage Boards in terms of Section 9 and 13B of the Governing Act to review and determine the wages and service conditions of Newspaper Employees including that of the applicant/workman. Thereafter the Wage Board submitted its recommendations to the Government on 31st December, 2010 and the Central Government accepted the same *vide* notification dated 11.11.2011 made the award enforceable subject to the decision of Hon'ble Supreme Court in writ petitions filed by the owners of newspapers against the Wage Board and its recommendations. Wage Board submitted its recommendations on 31st December, 2010 *vide* notification dated 11.11.2011 the award was made enforceable. The Hon'ble Supreme Court *vide* its judgment in ABP Pvt. Ltd. & Anr. Vs. Union of India & Ors. AIR 2014 SC

1228 dismissed the objections and petition against Majithia Wage Board and its recommendations and the Newspaper Establishment were directed to implement the same *w.e.f.* 11.11.2011. It was also directed that arrears be paid upto March, 2014. It is alleged that respondent management did not implement recommendations of Majithia Wage Board and did not revise wage and interim relief of the employees who were continuously demanding the revised wages and service conditions. In the contempt petition (Civil) no. 411 of 2014 reported in Avishek Raja & Ors. vs. Sanjay Gupta, AIR 2017 SC 2955, the Hon'ble Supreme Court further passed directions and clarifications on some legal issues in this judgment on 19.6.2017. In accordance with this judgment the newspaper establishment was under obligation to pay the dues to the confirmed employees along-with contractual employees in terms and directions passed in previous judgment dated 7.2.2014. It is again alleged by claimant that he was not being paid his dues and wages in accordance with the Wage Board notification and the management was disobeying the orders of Hon'ble Supreme Court. It is prayed that the act of the management terminating the services of petitioner be held to be illegal unjust and void. Petitioner may be reinstated in service from the day from he was ousted from service along-with full back wages, seniority and other consequential/past service benefits. It is also prayed that petitioner be held entitled for compensation on account of act of victimization by the respondents. The claimant/workman was demanding the dues since judgment dated 7.2.2014 however the respondent had made excuses one after the other and now refused to pay the same to the claimant and he was pressurized for forced resignation. The management started victimization of all employees inclusive of claimant/workman who demanded their legitimate dues. The victimization was resorted to by forced resignation of large number of employees but the claimant/workman had denied giving forced resignation. It is asserted that the claimant/workman along with other aggrieved employees had filed a complaint with regard to forced resignation of employees by the management before Additional Chief Secretary (Lab. & Emp.) of H.P. Government. The Labour Commissioner of H.P. and Labour Inspector, Dharamshala *vide* letters dated 10.7.2019, 14.7.2019 and 21.7.2019 respectively. Thereafter Principal Secretary (Lab. & Emp.) of H.P. Govt. Had issued the directions to the Labour Commissioner of H.P. for necessary action on it *vide* letter dated 29.7.2019 and 19.8.2019 respectively. Labour Commissioner through Deputy Labour Commissioner had issued directions to the Labour Office Dharamshala *vide* letter dated 1.8.019 and 23.8.2019. As per the directions issued by the office of Labour Commissioner dated 1.8.2019 the claimant/workman had filed claim of his due arrears of difference of old and revised wages along-with arrears of interim relief and other allowances before the designated authority under Section 17(1) of the Governing Act. It is specifically prohibited by the express provision of Section 16-A of the Working Journalist and Other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 to victimize the employees for demanding their dues from the management but the management continued to take vindictive action against the employees including the claimant/workman in the present matter. Management disregarded the statutory provision by way of threatening claimant/workman to withdraw the application filed by him under Section 17(1) of the Governing Act before the designated authority-*cum*-Labour Officer Dharamshala on 3.8.2019 as well as pressurized the claimant along-with other colleagues to extract the signatures on forced resignation. When the claimant had denied following the above illegal, unjust, arbitrary and unconstitutional directions of the officials of the management, the services of the claimant were terminated on 3.8.2019 by verbal/oral order *w.e.f.* 4.8.2019 along-with four colleagues namely Rajhuvinder Singh, Yash Paul Singh, Rahul Choudhary and Vinod Kumar. It is asserted that the claimant had tried to join the duty but he was not allowed to join his duty as well as he was not allowed to enter the gate of the office at Purana Mataur (Kangra). Thereafter claimant along-with other colleagues have filed their claim under Section 17(1) of the Governing Act before the designated authority-cum-Labour Officer Zone Kangra at Dharamshala. It is asserted that after the victimization by way of pressurizing to extract the forced resignation and restrain to join the duty by the respondent/management the claimant alongwith other colleagues have filed complaint before SHO, Police Station Kangra. It is asserted that on 5.8.2019 the claimant along-with four workmen had also filed applications under Section

16-A of the Governing Act against the oral/verbal termination of their services *w.e.f.* 4.8.2019. It is asserted that after knowing about the complaints of the verbal/oral termination and victimization filed by the applicant and other four colleagues, the respondent/management had planned a new conspiracy by way of issuing their malafide and back dated transfer-cum-new responsibility (promotion) orders however these malafide transfer orders were received by the claimant and other four colleagues after expiry of last date of joining at new station and these orders were clearly in violation of law of land as in absence of the appointment letter, agreement of service conditions and certified standing order the job of the applicant was not transferrable. Further the claimant had received this letter on 10.8.2019 issued by HR department with signatures of Deputy Manager, HR Sh. Anand Sharma. In accordance with postal record the transfer letter was sent by register post on 5.8.2019 but deliberately the back date was mentioned on it as 3.8.2019. It is alleged that the before issuing the transfer letter the respondent/management had already terminated the services of the workman orally/verbally on 4.8.2019 and restrained the claimant to join his duty. On 10.8.2019 claimant/workman had sent a demand notice by speed post to the Chairman-cum-Managing Director of the respondent company regarding illegal, unjust and malafide transfer orders and the same was deliberately not received by the addressee and returned back on 22.8.2019. This demand notice was espoused by the co-workers and Newspaper Employees Union of India. It is asserted that the claimant had received a back dated letter of termination send through speed post and same was not signed by the appointing authority of respondent/management and respondent/management had given false, arbitrary, fabricated, unjust and voidable reasons to terminate the services of the claimant. It is asserted that the order of termination dated 13.8.2019 was clearly in violation of the principles of natural justice as there was no opportunity or show cause notice given to the claimant/workman. The action of the management by issuing illegal termination and malafide transfer orders was contrary to the provisions of the Industrial Employment (Standing Orders) Act, 1946 is applicable to the services of workman in terms of Section 14 of the Governing Act read with Industrial Employment (Standing Order) Himachal Pradesh Rules-1973 and Amendment Rules 1991. It is further asserted that the termination order dated 13.8.2019 was illegal and same was in violation of the provisions of Section 33 of the Industrial Disputes Act. The respondent/management had not sought the approval of Labour Officer Dharamshala in terms of Section 33 of Industrial Disputes Act before terminating the services of the claimant as the proceedings under Section 17(1) were pending before the said authority. On 22.8.2019 the claimant had filed application/demand notice under Section 2-A of the Industrial Disputes Act before the Conciliation-*cum*-Labour Officer, Dharamshala and the said authority had issued notice to the respondent *vide* letter dated 20.9.2019 and the conciliation proceedings were initiated on 30.9.2019. The claimant/workman submitted that the illegal, arbitrary, unfair, malafide, voidable and unjust act of management by issuing firstly verbal/oral order *w.e.f.* 4.8.2019 and then written order of the termination on 13.8.2019 without any prior notice is liable to be quashed and set aside. The claimant is unemployed due to illegal and unjust act of the respondent/management and still facing financial hardships for livelihood. It is prayed that the act of the management terminating the services of petitioner be held to be illegal unjust and void. Petitioner may be reinstated in service from the day from he was ousted from service along-with full back wages as per recommendations of Majithia Wage Board, seniority and other consequential/past service benefits along with litigation costs.

3. In reply filed on behalf of the respondents preliminary objections qua maintainability, abuse of process of law, claimant not falling under definition of 'workman' under the Industrial Disputes Act, locus standi, resjudicata and wilful abandonment of service by the petitioner have been raised. On merits, it is admitted that the petitioner was engaged *w.e.f.* 17.3.2012 as Executive in Circulation Department. It is further submitted that the present application under Section 2-A of the Industrial Disputes Act, 1947, the applicant cannot raise any issue with regard to Employees Provident Fund. It is asserted that the applicant is relied upon the list of workmen provided by the respondent in another case reference no.203/2017 and designation of the applicant is mentioned as

Executive. It is denied that there was functional integrity and common control in the managements of M/s Divya Himachal Prakashan Pvt. Ltd. and M/s Samarpan Printers. It is asserted that the same person can be an owner of two different establishments but does not mean that there is a functional integrality and common control in the managements of both establishments. It is further asserted that Divya Himachal Prakashan Pvt. Ltd. and Samarpan Printers are two different establishment having different registration number, EPF Code number, PAN number, GST number etc. It is asserted that the applicant is not fall under the definition of workman within the meaning of Section 2(S) of the Industrial Disputes Act, 1947 as such the applicant was drawing more than Rs.10000/- per month at the time of this promotions. It is asserted that the respondent establishment does not fall under the definition of factory as defined under the Factory Act, 1948. It is further asserted that the Labour Department Himachal Pradesh had not covered the respondent establishment under the Factory Act, 1948. It is further asserted that the Standing Orders had already been submitted before the competent authority for certification and the same is still pending for certification. Moreover the Model Standing Order Act, 1945 is applicable to the respondent. It is further mentioned that contents of the petition regarding the Majithia Wage Board compliance do not have any relevancy in the light of the reference which is referred for adjudication to this court. Moreover, regarding Majithia Wage Board now the petitioner had filed separate claim petition which is pending before this court. It is denied that the applicant was terminated along-with others S/Sh. Raghuvinder Singh, Yashpal Singh, Ashu Kumar and Vinod Kumar but the true fact it that all the above named employees as well as applicant had been promoted and transferred to new place of posting and promotion letters were mailed in their mail account and also sent in their home address through registered post but all have not joined at their new place of posting and abandoned the job. It is denied that the respondent management victimized the applicant and forced him to submit his resignation. It is asserted that the police had not conducted any investigation in this regard against the respondent management till date. It is further asserted that fake and false stories have been created by the authorized representative of the applicant with an intention to create pressure upon the respondent management to pay Majithia Wage Board. It is asserted that the respondent management had not applied any pressure upon the applicant to give his resignation from service. The applicant had written totally false story in the present petition whereas the true fact is that the applicant voluntary given his option under paragraph 2(J) of the Majithia Wage Board recommendations to retain his existing wages/emoluments. The management had also not terminated the services of applicant rather the management had given promotion to the applicant as circulation representative in Circulation Department *w.e.f.* 3.8.2019 in new place of posting at Recongpeo Office and also given him increment of Rs.932/- per month plus Rs.3000/- per month as station allowance and asked him to join new station on or before 7.8.2019. The promotion letter was also emailed to the claimant in his email Id i.e. ashuk470@gmail.com as filled/submitted by him at the time of his enrolment/joining but the applicant had not received the promotion letter and left the office and also not given any response to the mail. Thereafter the promotion letter was sent to the applicant vide registered letter dated 5.8.2019 under receipt no.EE790823934IN at his home address but again no response from the applicant. Thereafter the management had given him one more chance to join at Recongpeo office on or before 12.8.2019 and mail in this regard was sent in his email Id which was wilful negligence, disobedience and sheer indiscipline, therefore the applicant was relieved from service with immediate effect *w.e.f.* 13.8.2019 and information in this regard was sent in his email id as well as hard copy of the same was sent to him through registered post on 16.8.2019 *vide* receipt no.EE792845623IN. It is asserted that the management had never terminated the services of applicant, rather given him promotion vide promotion letter dated 3.8.2019 and if the applicant was ready to accept his promotion and joining at new place of posting at Recongpeo the management was also ready to take him back in service with continuity of service but without back wages in according with the principle of No work no pay. It is asserted that the respondent has not mentioned back date in promotion letter as 3.8.2019 but the true fact is that the said promotion letter was drafted in the eve of 3.8.2019 and could not be sent to the applicant. On 4.8.2019 it was Sunday and the promotion letter was posted to applicant on 5.8.2019. It is further

asserted that due to holiday of second Saturday on 14.8.2019 and Sunday on 15.8.2019 the reliving letter was sent through post on 16.8.2019. It is further asserted that the information regarding reliving from services was sent to the applicant through mail dated 13.8.2019 and the same was signed by the then Dy. Manager (HR) Mr. Anand Sharma. It is asserted that the applicant had not accepted the promotion order and not joined at Recongpeo office without any communication in writing and this act of the applicant was treated as wilful negligence, disobedience and sheer indiscipline, therefore the applicant was relieved from service with immediate effect *w.e.f.* 13.8.2019 and information in this regard was sent in his email id as well as hard copy of the same was sent through registered post dated 16.8.2019 *vide* receipt no.EE792845623IN. It is further submitted that the applicant possesses ample cultivated land and earning his livelihood as an agriculturist. Other averments and allegations made in the claim petition were denied and it is prayed that the claim deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.

2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? ..OPP.

3. Whether the petitioner is not a workman for the purpose of this reference. If yes its effect? ..OPR.

4. Whether the petitioner has abandoned the services in the manner as alleged. If yes its effect? ..OPR.

Relief.

6. In order to prove his case the petitioner has produced on record his affidavit Ext. PW1/A wherein he reiterated the fact stated in the petition. He also produced on record copy of letter dated 10th July, 2019 Ext. PW1/B, copy of another letter dated 29.7.2019 Ext. PW1/C, copy of letter dated 1st August, 2019 Ext. PW1/D, copy of complaint dated 3rd August, 2019 Ext. PW1/E, copy of FIR dated 3.8.2019 Ext. PW1/F and envelop Ext. PW1/G. The petitioner has also examined Shri Rahul Chaudhary as PW2 by way of affidavit Ext. PW2/A wherein he has stated that the petitioner Ashu Kumar, Raghuvinder, Yashpal, Vinod, Jitender, Purshotam etc. were posted in Divya Himachal Prakashan.

7. Respondent has examined Shri Hitesh Kotia s/o Shri R.S. Kotia by way of affidavit Ext. RW1/A wherein he reiterated the facts mentioned in the reply. He also produced on record copy of reply dated 30.9.2019 Ext. RW1/B, copy of email dated 3.8.2019 Ext. RW1/C, copy of email dated 8.8.2019 Ext. RW1/D, copy of email dated 13.8.2019 Ext. RW1/E, copy of letter dated 3.8.2019 Ext. RW1/F, copy of letter dated 13.8.2019 Ext. RW1/G, copy of attendance record of employees Ext. RW1/H (14 pages), copy of letter dated 27.6.2018 Ext. RW1/J, copy of letter dated 26.12.2019 Ext. RW1/K, copy of letter dated 19.5.2021 Ext. RW1/L, copy of receipt dated 22.5.2021 Ext. RW1/M and copy of resolution dated 11.5.2015 Ext. RW1/N.

8. I have heard the learned Counsel for the petitioner as well as learned AR/Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Yes
Relief.	: Claim petition is dismissed allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1, 3 and 4

10. All these issues are interlinked and interconnected and taken up together for the sake of evidence and avoid repetition of evidence.

11. Certain facts of the present claim are not disputed i.e. petitioner was employed as Executive in Circulation Supports Department *w.e.f.* 17.3.2012. The petitioner has asserted that he falls within the definition of workman which fact is denied by the respondent stating that the salary of the petitioner was Rs.10000/- or above. The dispute between the petitioner and respondent is however governed under the Industrial Disputes Act as well as Working Journalist and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. The petitioner falls under the category of non journalist newspaper employee and is covered under Section 9 to 13B of the Governing Act for seeking the relief under the Industrial Disputes Act.

12. Document Ext. PW1/B dated 10.7.2019 is the complaint made by the petitioner and his colleagues against the respondent for non compliance of recommendations of Majithia Wage Board, alleging that the respondent were seeking forced resignation and threatening the workman with transfer on less salary and outside station. *Vide* Ext/ PW1/C Principal Secretary, Labour & Employment had directed the Labour Commissioner to take necessary action on the complaint made by petitioner and others who further directed the Labour Officer Dharamshala to investigate and take the legal action on the said complaint vide Ext. PW1/D. These documents reflect that petitioner and others had made complaint to the authorities regarding non implementation of Majithia Wage Board recommendations and other oppressive measures by the respondent against petitioner and others in July, 2019.

13. On 3.8.2019 the complaint was made to the police authority alleging that petitioner and others were being harassed and not allowed to enter the company premises by the respondent management. The contention of the respondent is however based on the denial of allegations made to the labour authorities and it is asserted that management had not terminated the services of applicant/claimant but had rather given promotion to the applicant petitioner as Circulation Representative in Circulation Department *w.e.f.* 3.8.2019 at a new place of posting Recongpeo with increment of Rs.932/- per month plus Rs.3000/- per month as station allowance. The mail qua promotion was sent to the petitioner on 3.8.2019 at its official e-mail address i.e. ashuk470@gmail.com. The petitioner Ashu Kumar has admitted in his cross-examination that the above mentioned e-mail ID belongs to him. He also admits that he was promoted and transferred and the order was handed over to him on 3.8.2019. He admitted that he was asked to report for duty at Recongpeo. He admitted that letter dated 12.8.2019 asking him to join immediately at the place of posting was served upon him. Similarly the letter dated 13.8.2019 Ext. RW1/E was also sent to his email address. He further admitted that he had replied to the letters dated 3.8.2019, 7.8.2019 and 12.8.2019. However he also admits these replies were not sent through registered AD. Surprisingly

no copies of these replies have been produced on the record by the petitioner. The petitioner admits that he had not written to company about intention to forgo the promotion. He admitted that he was relieved by the company on 13.8.2019. He further admits that he had not joined at Recongpeo till date and he was not interested for promotion. He admits that the company was empowered to transfer him. He has expressed his unwillingness to go to Recongpeo and intention to forgo the promotion. He mentioned that he had never conveyed this intention to the respondent formally. The petitioner had sent a demand notice through speed post to the respondent company on 10.8.2019. This demand is also with regard to defective, arbitrary and malafide transfer only.

14. RW1 Shri Hitesh Kotia has denied that during August, 2019 the petitioner had worked for whole month. Petitioner Ashu Kumar has however asserted that his attendance was marked till 6th August, 2019 but himself reported vide GD entry that he was not allowed to enter the premises of the company after 3.8.2019 this statement of the petitioner is inconsistent in view of documents produced on record.

15. The present dispute is with respect to illegal termination of the petitioner by the respondent but respondents have alleged voluntary abandonment of the work and that merely relieving the petitioner consequent to transfer is not a dispute under Sections 25-F and 25-N of the Industrial Disputes Act, 1947.

16. Hon'ble High Court of Himachal Pradesh in **Ramesh Kumar vs. Food Corporation of India, 2013 LLR 709** has held in para no.11 and 14 as follows:—

> "In view of the above, the legal position on the issue of transfer can be summarized as under:—
>
> (1) Transfer is a condition of service.
>
> (2) It does not adversely affect the status or emoluments or seniority of the employee.
>
> (3) The employee has no vested right to get a posting at a particular place or can choose to serve at a particular place for a particular tenure.
>
> (4) It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.
>
> (5) Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.
>
> (6) There is a very little scope of judicial review by the Court / Tribunal against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or mala fides is established.
>
> (7) In case of mala fides, the employee has to make specific averments and should prove the same by adducing implacable evidence.
>
> (8) The person against whom allegation of male fide is alleged is to be impleaded as a party by name.
>
> (9) Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Departmental personnel.

(10) The Court does not have a power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children as consideration of this issues fall within the exclusive domain of the employer.

(11) If the transfer order is made in mid-academic session of the children of the employee, the Court / Tribunal cannot interfere. It is for the employer to consider such a personal grievance".

"14. The Hon'ble Supreme Court in State of Haryana & Ors., versus Kashmir Singh & Anr., (2010) 13 SCC 306, has observed that the Court should not interfere with purely administrative matters except where absolutely it is necessary on account of violation of any fundamental or other legal right. The Hon'ble Supreme Court has also reiterated the law in Registrar General, High Court of Judicature of Madras versus R.Perachi & Anr., (2011) 12 SCC 137, by observing that transfer is an incident of service and if transfer is made on administrative grounds and judicial review is limited and the High Court has not to interfere with the transfer lightly".

17. The Hon'ble High Court of H.P. in **State of H.P. & Ors. vs. Presiding Judge & Anr., 2006 LLR 1020** has held in paras 18 and 23 as follows:—

"18. To attract Section 25-F of the Act, termination of the services of an employee must be by some act of the employer. If there is no termination of the services by the employer out of his own volition but the disengagement or discharge of the employee is caused on account of some act or event over which the employer has no control, then in my view, it cannot be said to be retrenchment of services of a workman within the meaning of Section 2(oo) of the Act. The essence of retrenchment is the termination of workman's services by some act on the part of the employer. In the instant case, the employer is not expected to wait for two years for workman to return who had also sent notice at her admittedly known address.

23. In the present case, as noticed above, the workman remained absent without any information to the employer or communicating any reasons for her absence and suddenly wanted to join her duties after two years with a certificate that she was advised to live with her husband during this period. In my view, voluntary absence which amounts to voluntary abandonment and voluntary retirement from the work would not amount to retrenchment within the meaning, of Section 2(oo) of the Act and therefore, Section 25-F of the Act is not attracted in the facts and circumstances of this case".

18. Hon'ble High Court of Delhi in **Shri Gian Chand versus Secretary (Labour) Delhi Administration** in **C.W. No.2339/93 & C.M. 3767/93** has held that *failure of an employee to comply with the transfer order does not amount* to termination but abandonment. The intention has to be inferred from the act and conduct of the party and as a question of fact.

19. In the light of above precedent it is important to observe that during the cross-examination of the petitioner he has revealed that he was not interested to get promotion or join a new place of posting. He despite notice to transfer order did not convey his intention not to join at new place of posting nor his intention to forgo the promotion. He alleges that he was not allowed to enter into the company after 3.8.2019 but also stated that he worked in the company till 13.8.2019. According to him his presence was marked in the company till 6.8.2019. He has stated that he replied to notices issued by the company but no such document could be proved by way of

evidence before the court. This conduct of the petitioner points towards the complete abandonment of his job after 3.8.2019. The industrial dispute was raised on 10.8.2019 but no reason for joining of new place of posting was conveyed. He has not raised any objection with the respondents alleging change of service condition. The Hon'ble Supreme Court in **The Tamil Nadu Agricultural University & Anr. vs. R. AGILA ETC.** in **Special Leave of Appeal (Civil) Nos. 13070-13075 of 2022** has held in paras no.3,4 and 7 as follows:—

"3. It is established as a part of service law jurisprudence that transfer is an exigency of service. As such, when a person becomes an employee of the Government, the incidence of transfer becomes inherent in the terms of service unless it is specially barred under certain provisions governing conditions of service.

4. Under such terms and conditions of service, an employee has no right to remain absent or refuse to join the new place of transfer once relieved from their current place of posting. The employee is entitled to avail all available remedies for redressal of grievances, but it does not entitle them to not comply with the transfer orders. The employee is well within his rights to join the transferred place of posting and still continue to avail the remedies available under the law for redressal of his grievances against the transfer.

7. We also find it relevant to quote here a judgment of this Court on the same subject in Tushar D. Bhatt v. State of Gujarat, (2009) 11 SCC 678

"16. The legal position has been crystallised in a number of judgments that transfer is an incidence of service and transfer are made according to administrative exigencies.

17. In the instant case, in the entire tenure of more than 18 years, the appellant was only transferred twice. The appellant's transfer order cannot be termed as mala fide. The appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorisedly absent from official duties from 11-10-1999 to 27.4.2000 i.e. more than six months. In the interest of discipline of any institution or organization such an approach and attitude of the employees cannot be countenanced.

18. In Gujarat Electricity Board v. Atmaram Sungomal Poshani [(1989) 2 SCC 602: 1989 SCC (L&S) 393: (1989) 10 ATC 396: AIR 1989 SC 1433] this Court had an occasion to examine the case of almost similar nature. This Court observed as under:

"4. ....Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the public servant concerned must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place of the other".....

20. Hon'ble Supreme Court in **U.P. Singh vs. Punjab National Bank, 2024 LLR 119** has held in para 10 as follows:—

> "10. A person aggrieved by the order of transfer cannot sit at home and decide on his own that the order is illegal or erroneous and he will not comply with the same. If the workman had any grievance, he could have availed of his remedy available against the same; otherwise, he was duty-bound to comply with the same. Failure to avail of any remedy also would mean that he had accepted the order and was duty-bound to comply with the same. At a later stage, he could not take a plea that the order being erroneous, no consequence would follow for its non-compliance".

21. The Hon'ble High Court of H.P. in **Smt. Rani Sharma and Others vs. State of Himachal Pradesh and Another, 2019 LLR 856** has held in paras 32 to 35 as follows:—

> "32. Coming back to the facts of this case. As already discussed above, it is not in dispute that the case of the workmen was not taken up with the appropriate Government either by appreciable number of employees or by the Management. In other words, the cause of the workmen was not espoused either by number of workmen or by the Management. The cause was independently espoused by both the workmen in their individual capacity before the appropriate Government. Such dispute, which was individually raised by the workmen feeling aggrieved by the issuance of the transfer order, by no stretch of imagination, could have been referred to Industrial Tribunal-cum-Labour Court by the appropriate Government under Section 10 of the Industrial Disputes Act. That being so, adjudication upon the said Reference by the learned Labour Court, which stands assailed by way of the writ petition filed by the employer, is per se void ab initio and not sustainable in the eyes of law.
>
> 33. In order to give an opportunity to the learned Counsel for the workman to demonstrate that an Industrial Dispute qua transfer orders could have been individually espoused by them under the Industrial Disputes Act, sufficient time was given, but he could not substantiate in law that such a dispute could have been individually raised by them and subsequently referred by the appropriate government by way of a Reference for adjudication to the Industrial Tribunal-cum-Labour Court.
>
> 34. Thus, as it is apparent that no individual Industrial Dispute could have been raised by the workmen against the transfer order, the Reference made by the appropriate Government on the demand notice of the workmen was bad in law and not in consonance with the provisions of Section 2(k) of the Industrial Disputes Act. As a natural corollary, the adjudication of the said Reference by the learned Tribunal by way of award dated 04.08.2010 in Reference No. 36 of 2006 is also thus void ab initio and not sustainable in law.
>
> 35. Accordingly in view of discussion held herein-above, both the Reference made by the appropriate Government as well as the award dated 04.08.2010 passed in Reference No. 36 of 2006, titled as Baldev Sharma and another vs. The Area Manager, Bata India, by learned Tribunal are quashed and set aside. Consequently, the writ petition filed by the Company, i.e. CWP No. 4993 of 2011, is allowed whereas the writ petition filed by the workmen, i.e. CWP No. 8419 of 2010, is dismissed. No orders as to costs".

22. Learned Counsel for the petitioner has vehemently argued that even if the petitioner had failed to report at new place of posting respondent did not follow due process before dispensing with the services of the petitioner hence termination of the petitioner was void and illegal.

23. The peculiar circumstances of the present case show that in order to constitute termination the intention of petitioner to continue his duties was relevant. Petitioner tried to join at the place from where he was already transferred and reported to police that he was not allowed to enter the company premises. Petitioner however did not bother to join his duty at new place of posting after which he was at liberty to raise appropriate dispute if any qua victimization by way of transfer or otherwise. He could not produce evidence qua his response if any to the various notices including relieving notice dated 13.8.2019. The pleadings of the respondent read in para no.6 page 5 of the reply as follows:—

> "The management has never terminated the services of applicant rather given him promotion *vide* promotion letter dated 03.8.2019 and if the applicant is ready to accept his promotion and joining at new place of posting at Recongpeo the management is also ready to take him back in service with continuity of service but without back wages on the principle of '**No Work No Pay".**

24. In view of this averment the relevant notice Ext. RW1/G would not amount to termination. Petitioner has conceded unequivocally that he does not intend to join new place of posting or to avail promotion thus the intention of petitioner qua non compliance of principle of natural justice and opportunity of being heard is no more relevant in the present case. The conduct of the petitioner amounts to wilful abandonment and deliberate non compliance of transfer order from 3.8.2019 to 13.8.2019. Pertinent to observe that even being aware of his transfer the petitioner did not join his duty or raise any written objection with the respondent in this regard.

25. As laid down by the Hon'ble High Court of H.P. in **Rani Sharma's case (supra)** the crux of the dispute between petitioner and respondent was transfer order and not the dismissal, discharge and retrenchment. As the petitioner has abandoned the job thus he is not entitled to any relief under Section 25 Clause F of the Industrial Disputes Act.

26. Learned counsel for the petitioner has also argued that by way transfer and relieving order the respondent has not complied with the provisions of Section 33 Clause 1 of the Industrial Disputes Act, in view of the ongoing dispute between the parties under Section 17 Clause 1 of the Governing Act with the appropriate authority. Pertinent to mention here that there is no evidence to establish that transfer of the petitioner had caused change in his service condition or prejudiced him in any manner. On the other hand he failed to join at the relevant place of posting with no plausible excuse. In the pleadings of the present claim also there is no mention of the prejudice which has been caused to the petitioner by way of transfer or any change in service condition which would have affected him adversely. There was mere apprehensions expressed with regard to new postings. No evidence has been led in this regard. Thus the petitioner cannot avail benefit under Section 33 Clause 1 of the Industrial Disputes Act. In view of the above discussions and the evidence which has been led before this court there does not appear to be any expressed retrenchment or intentional termination of services of the petitioner by the respondent hence issues no.1, 3 and 4 are decided in the favour of the respondent.

Issue No. 2

27. It appears from the statement of witness that there was no formal termination of the petitioner by the respondent. Respondent in reply to the claim of the petitioner has shown their willingness to join new place of posting the petitioner has averred in the statement that he was unwillingly to join new place of posting. In these circumstances and considering the fact that according to learned counsel the petitioner is employed somewhere, opportunity to join at place of posting/transfer would be a futile exercise. The question of back wages cannot be considered as petitioner has not joined his new place of posting as per transfer order and the principle of no work

no pay would apply. The petitioner had not led any cogent evidence with regard to not joining at new place of posting or justify his absence. In these circumstances no benefits/relief can be granted in the favour of the petitioner. Hence this issue is decided accordingly.

RELIEF

28. In view of my discussion on the issues nos. 1 to 4 above, the present claim made by the petitioner against the respondent is not maintainable and the reference is decided accordingly. Parties are left to bear their costs.

29. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of April, 2025.

Sd/-
(PARVEEN CHAUHAN**),**
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. :28/2021
Date of Institution : 23-2-2021
Date of Decision : 28-4-2025

Shri Rahul Choudhary s/o Shri Raj Kumar, r/o Village & P.O. Matour, Tehsil & District Kangra, H.P. ..*Petitioner.*

Versus

M/s Divya Himachal Prakashan Pvt. Ltd., Head Office at Kangra-Pathankot Marg, Mataur, Tehsil & District Kangra, H.P. through its MD. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.D. Sharma, Ld. Adv.

For the Respondent : Sh. N.L. Kaundal, Ld. AR
: Sh. Vijay Kaundal, Ld. Adv.

AWARD

This is a claim petition under Section 2-A (2) of the Industrial Disputes Act, 1947 filed directly before this court after completion of mandatory period of 45 days of filing of dispute before the Conciliation Officer.

2. The brief facts as stated in the claim petition are that the applicant/workman was employed as IT Engineer (Technical Support) on 10.3.2011 by the management M/s. Divya Himachal Prakashan Pvt. Ltd. without appointment letter and the applicant was deputed to work in head office of respondent/management situated at Kangra-Pathankot Marg, Old Mataur, Kangra, H.P. The salary of applicant/workman was paid by the respondent management in his salary account No.65113382159 in the branch of State Bank of Patiala (now merged into SBI) branch at Kangra city. After the appointment of applicant the provident fund was not deducted by the respondent and same was started to deduct from 1.3.2015. It is asserted that the respondent management is a body corporate registered under the Companies Act, 1956 (amended as Act, 2013) having its registered office at Kangra-Pathankot Road, Old Mataur, Kangra, H.P. and primary business of company is to publish and print a newspaper in the name and style of 'Divya Himachal'. The printing centre of the respondent management is also situated in the same establishment at Kangra-Pathankot Marg, Old Mataur, Kangra, HP and registered as partnership firm in the name and style of M/s Samarpan Printers and Shri Bhanu Dhamija is the Chairman-cum-Managing Director and Shri Anil Soni is the Director-cum-Editor-cum-Printer/publisher of the company and its newspaper 'Divya Himachal' and both are the proprietors/partners of the Printing Press M/s Samarpan Printers as well as functional integrity and common control of the managements of both establishment of respondent/management. The service conditions and wages of applicant/workman were governed by The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, hereinafter referred to as the 'Governing Act' enacted by the Parliament. The applicant/workman falls under Section 2(c) and 2 (dd) of the Governing Act and defined a non-journalist newspaper employee of the concerned newspaper establishment as well as applicant/workman was also workman in terms of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is asserted that the respondent/management and printing press i.e. M/s Samarpan Printers are covered under the Governing Act and falls within the definition of Single Newspaper Establishment in terms of Section 2(d) read with Schedule of the Act, whereas Daily Divya Himachal is a Hindi daily newspaper of the respondent/management falls under Section 2b of the Governing Act. In terms of Section 14 of Governing Act the Industrial Employment (Standing Orders) Act, 1946 applicable to the respondent/management but the respondent/management not certified its standing orders in terms of Section 14 of Governing Act and in terms of the Industrial Disputes Act, 1947 the respondent/management falls within the provisions of Chapter VB and also in terms Section 2(m) of Factories Act, 1948 the respondent management falls within the definition of the factory. The Government of India, Ministry of Labour vide notification dated 24.5.2007 constituted the Wage Boards in terms of Section 9 and 13B of the Governing Act to review and determine the wages and service conditions of Newspaper Employees including that of the applicant/workman. Thereafter the Wage Board submitted its recommendations to the Government on 31st December, 2010 and the Central Government accepted the same *vide* notification dated 11.11.2011 made the award enforceable subject to the decision of Hon'ble Supreme Court in writ petitions filed by the owners of newspapers against the Wage Board and its recommendations. Wage Board submitted its recommendations on 31st December, 2010 *vide* notification dated 11.11.2011 the award was made enforceable. The Hon'ble Supreme Court vide its judgment in ABP Pvt. Ltd. & Anr. Vs. Union of India & Ors. AIR 2014 SC 1228 dismissed the objections and petition against Majithia Wage Board and its recommendations and the Newspaper Establishment were directed to implement the same *w.e.f.* 11.11.2011. It was also directed that arrears be paid upto March, 2014. It is alleged that respondent management did not implement recommendations of Majithia Wage Board and did not revise wage and interim relief of the employees who were continuously demanding the revised wages and service conditions. In the contempt petition (Civil) no. 411 of 2014 reported in Avishek Raja & Ors. vs. Sanjay Gupta, AIR 2017 SC 2955, the Hon'ble Supreme Court further passed directions and clarifications on some legal issues in this judgment on 19.6.2017. In accordance with this judgment the newspaper establishment was under obligation to pay the dues to the confirm employees alongwith contractual employees in terms and directions passed in previous judgment

dated 7.2.2014. It is again reiterated by claimant that he was not being paid his dues and wages in accordance with the Wage Board notification and the management was disobeying the orders of Hon'ble Supreme Court. It is prayed that the act of the management terminating the services of petitioner be held to be illegal unjust and void. Petitioner may be reinstated in service from the day from he was ousted from service along-with full back wages, seniority and other consequential/past service benefits. It is also prayed that petitioner be held entitled for compensation on account of act of victimization by the respondents. It is alleged that the claimant/workman was not paid his dues and wages accrued under the Wage Board Notification which was ultimately merged with the directions of judgments dated 7.2.2014 and 19.6.2017 passed by the Hon'ble Supreme Court. The employees including the claimant/petitioner had filed a contempt before Hon'ble Supreme Court wherein the Hon'ble Supreme Court directed and clarifications on some legal issues in its judgment on 19.6.2017. The claimant/workman had demanding the dues since judgment dated 7.2.2014 however the respondent had made excuses one after the other and now refused to pay the same to the claimant and he was pressurized for forced resignation. The management started victimization all employees inclusive of claimant/workman who demanded their legitimate dues. The victimization was resorted to by forced resignation of large number of employees but the claimant/workman had denied giving forced resignation. It is asserted that the claimant/workman along with other aggrieved employees had filed a complaint with regard to forced resignation of employees by the management before Additional Chief Secretary (Lab. & Emp.) of H.P. Government. The Labour Commissioner of H.P. and Labour Inspector, Dharamshala vide letters dated 10.7.2019, 14.7.2019 and 21.7.2019 respectively. Thereafter Principal Secretary (Lab. & Emp.) of H.P. Govt. Had issued the directions to the Labour Commissioner of H.P. for necessary action on it *vide* letter dated 29.7.2019 and 19.8.2019 respectively. Labour Commissioner through Deputy Labour Commissioner had issued directions to the Labour Office Dharamshala vide letter dated 1.8.019 and 23.8.2019. As per the directions issued by the office of Labour Commissioner dated 1.8.2019 the claimant/workman had filed claim of his due arrears of difference of old and revised wages along-with arrears of interim relief and other allowances before the designated authority under Section 17(1) of the Governing Act. Specifically prohibited by the express provision of Section 16-A of the Working Journalist and Other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 for victimization of employees for demanding their dues from the management but the management continued to take vindictive action against the employees including the claimant/workman in the present matter. Management disregarded the statutory provision by way of threatening claimant/workman to withdraw the application filed by him under Section 17(1) of the Governing Act before the designated authority-cum-Labour Officer Dharamshala on 3.8.2019 as well as pressurized the claimant along-with other colleagues to extract the signatures on forced resignation. When the claimant had denied following the above illegal, unjust, arbitrary and unconstitutional directions of the officials of the management, the services of the claimant were terminated on 3.8.2019 by verbal/oral order *w.e.f.* 4.8.2019 along-with four colleagues namely Rajhuvinder Singh, Yash Paul Singh, Ashu Kumar and Vinod Kumar. It is asserted that the claimant had tried to join the duty but he was not allowed to join his duty as well as he was not allowed to enter the gate of the office at Purana Mataur (Kangra). Thereafter claimant along-with other colleagues have filed their claim under Section 17(1) of the Governing Act before the designated authority-*cum*-Labour Offier Zone Kangra at Dharamshala. It is asserted that after the victimization by way of pressurizing to extract the forced resignation and restrain to join the duty by the respondent/management the claimant along-with other colleagues have filed complaint before SHO, Police Station Kangra. It is asserted that on 5.8.2019 the claimant along-with four workmen had also filed applications under Section 16-A of the Governing Act against the oral/verbal termination of their services *w.e.f.* 4.8.2019. It is asserted that after knowing about the complaints of the verbal/oral termination and victimization filed by the applicant and other four colleagues, the respondent/management had planned a new conspiracy by way of issuing their malafide and back dated transfer-cum-new responsibility (promotion) orders however these malafide transfer orders were received by the claimant and other four colleagues after expiry of last

date of joining at new station and these orders were clearly in violation of law of land as in absence of the appointment letter, agreement of service conditions and certified standing order the job of the applicant was not transferrable. Further the claimant had received this letter on 10.8.2019 issued by HR department with signatures of Deputy Manager, HR Sh. Anand Sharma. In accordance with postal record the transfer letter was sent by register post on 5.8.2019 but deliberately the back date was mentioned on it as 3.8.2019. It is alleged that the before issuing the transfer letter the respondent/management had already terminated the services of the workman orally/verbally on 4.8.2019 and restrained the claimant to join his duty. On 10.8.2019 claimant/workman had sent a demand notice by speed post to the Chairman-cum-Managing Director of the respondent company regarding illegal, unjust and malafide transfer orders and the same was deliberately not received by the addressee and returned back on 22.8.2019. This demand notice was espoused by the co-workers and Newspaper Employees Union of India. It is asserted that the claimant had received a back dated letter of termination send through speed post and same was not signed by the appointing authority of respondent/management and respondent/management had given false, arbitrary, fabricated, unjust and voidable reasons to terminate the services of the claimant. It is asserted that the order of termination dated 13.8.2019 was clearly in violation of the principles of natural justice as there was no opportunity or show cause notice given to the claimant/workman. The action of the management by issuing illegal termination and malafide transfer orders was contrary to the provisions of the Industrial Employment (Standing Orders) Act, 1946 is applicable to the services of workman in terms of Section 14 of the Governing Act read with Industrial Employment (Standing Order) Himachal Pradesh Rules-1973 and Amendment Rules 1991. It is further asserted that the termination order dated 13.8.2019 was illegal and same was in violation of the provisions of Section 33 of the Industrial Disputes Act. The respondent/management had not seeking the approval of Labour Officer Dharamshala in terms of Section 33 of Industrial Disputes Act before terminating the services of the claimant as the proceedings under Section 17(1) were pending before the said authority. On 22.8.2019 the claimant had filed application/demand notice under Section 2-A of the Industrial Disputes Act before the Conciliation-cum-Labour Officer, Dharamshala and the said authority had issued notice to the respondent vide letter dated 20.9.2019 and the conciliation proceedings were initiated on 30.9.2019. The claimant/workman submitted that the illegal, arbitrary, unfair, malafide, voidable and unjust act of management by issuing firstly verbal/oral order *w.e.f.* 4.8.2019 and then written order of the termination on 13.8.2019 without any prior notice is liable to be quashed and set aside. The claimant is unemployed due to illegal and unjust act of the respondent/management and still facing financial hardships for livelihood. It is prayed that the act of the management terminating the services of petitioner be held to be illegal unjust and void. Petitioner may be reinstated in service from the day from he was ousted from service along-with full back wages as per recommendations of Majithia Wage Board, seniority and other consequential/past service benefits along with litigation costs.

3. In reply filed on behalf of the respondent whereby preliminary objections qua maintainability, abuse of process of law, claimant not falling under definition of 'workman' under the Industrial Disputes Act, locus standi, resjudicata and wilful abandonment of service by the petitioner have been raised. On merits, it is admitted that the petitioner was engaged *w.e.f.* 11.3.2011 as IT Engineer (Technical Support). It is further submitted that the present application under Section 2-A of the Industrial Disputes Act, 1947, the applicant cannot be raised any issue with regard to Employees Provident Fund. It is asserted that the applicant is relied upon the list of workmen provided by the respondent in another case reference no.203/2017 and designation of the applicant is mentioned as Executive. It is denied that there was functional integrality and common control in the managements of M/s Divya Himachal Prakashan Pvt. Ltd. and M/s Samarpan Printers. It is asserted that the same person can be an owner of two different establishments but does not mean that there is a functional integrality and common control in the managements of both establishments. It is further asserted that Divya Himachal Prakashan Pvt. Ltd. and Samarpan Printers are two different establishment having different registration number, EPF Code number,

PAN number, GST number etc. It is asserted that the applicant is not fall under the definition of workman within the meaning of Section 2(S) of the Industrial Disputes Act, 1947 as such the applicant was drawing more than Rs.10000/- per month at the time of this promotions. It is asserted that the respondent establishment is not fall under the definition of factory as defined under the Factory Act, 1948. It is further asserted that the Labour Department Himachal Pradesh had not covered the respondent establishment under the Factory Act, 1948. It is further asserted that the Standing Orders had already been submitted before the competent authority for certification and the same is still pending for certification. Moreover the Model Standing Order Act, 1945 is applicable to the respondent. It is further mentioned that contents of the petition regarding the Majithia Wage Board compliance do not have any relevancy in the light of the reference which is referred for adjudication to this court. Moreover, regarding Majithia Wage Board now the petitioner had filed separate claim petition which is pending before this court. It is denied that the applicant was terminated along-with others S/Sh. Raghuvinder Singh, Yashpal Singh, Ashu Kumar and Vinod Kumar but the true fact it that all the above named employees as well as applicant had been promoted and transferred to new place of posting and promotion letters were mailed in their mail account and also sent in their home address through registered post but all have not joined at their new place of posting and abandoned the job. It is denied that the respondent management victimized the applicant and forced him to submit his resignation. It is asserted that the police had not conducted any investigation in this regard against the respondent management till date. It is further asserted that fake and false stories have created by the authorized representative of the applicant with an intention to create pressure upon the respondent management to pay Majithia Wage Board. It is asserted that the respondent management had not made any pressure upon the applicant to give his resignation from service. The applicant had written totally false story in the present petition whereas the true fact is that the applicant voluntary given his option under paragraph 2(J) of the Majithia Wage Board recommendations to retain his the then existing wages/emoluments. The management had also not terminated the services of applicant rather the management had given promotion to the applicant as circulation representative in Circulation Department *w.e.f.* 3.8.2019 in new place of posting at Bureau Office Shimla and also given him increment of Rs.1100/- per month plus Rs. 2500/- per month as station allowance and asked him to join new station on or before 7.8.2019. The promotion letter was also emailed to the claimant in his email Id *i.e.* rahulkangra.sone@gmail.com as filled/submitted by him at the time of his enrolment/joining but the applicant had not received the promotion letter and left the office and also not given any response to the mail. Thereafter the promotion letter was sent to the applicant vide registered letter dated 5.8.2019 under receipt no.EE908239961N in his home address but again no response from the applicant. Thereafter the management had given him one more chance to join at Chamba office on or before 12.8.2019 and mail in this regard was sent in his email Id which was wilful negligence, disobedience and sheer indiscipline, therefore the applicant had relieved from service with immediate effect *w.e.f.* 13.8.2019 and information in this regard was sent in his email id as well as hard copy of the same was sent to him through registered post on 16.8.2019 vide receipt no.EE7928456101N. It is asserted that the management had never terminated the services of applicant, rather given him promotion *vide* promotion letter dated 3.8.2019 and if the applicant was ready to accept his promotion and joining at new place of posting at Shimla the management was also ready to take him back in service with continuity of service but without back wages in according with the principle of No work no pay. It is asserted that the respondent has not mentioned back date in promotion letter as 3.8.2019 but the true fact is that the said promotion letter was drafted in the eve of 3.8.2019 and could not be sent to the applicant. On 4.8.2019 it was Sunday and the promotion letter was posted to applicant on 5.8.2019. It is further asserted that due to holiday of second Saturday on 14.8.2019 and Sunday on 15.8.2019 the relieving letter was sent through post on 16.8.2019. It is further asserted that the information regarding relieving from service was sent to the applicant through mail dated 13.8.2019 and the same was signed by the then Dy. Manager (HR) Mr. Anand Sharma. It is asserted that the applicant had not accepted the promotion order and not join at Chamba office without any communication in writing and this act

of the applicant was treated as wilful negligence, disobedience and sheer indiscipline, therefore the applicant was relieved from service with immediate effect *w.e.f.* 13.8.2019 and information in this regard was sent in his email id as well as hard copy of the same was sent through registered post dated 16.8.2019 *vide* receipt no.EE7928456371IN. It is further submitted that the applicant possesses ample cultivated land and earning his livelihood as an agriculturist. Other averments and allegations made in the claim petition were denied and it is prayed that the claim deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP

2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? ..OPP

3. Whether the petitioner is not a workman for the purpose of this reference. If yes its effect? ..OPR

4. Whether the petitioner has abandoned the services in the manner as alleged. If yes its effect? ..OPR

Relief.

6. In order to prove his case the petitioner has produced on record his affidavit Ext. PW1/A wherein he reiterated the fact stated in the petition. He has also produced on record list of employees Ext. PW1/B, identity card Mark-1, judgment of Hon'ble Supreme Court dated 13.10.2017 Ext. PW1/C, dated 27.10.2017 Ext. PW1/D, dated 28.1.2019 Ext. PW1/E, dated 5.4.2019 Ext. PW1/F, letter dated 10.7.2019 Mark-2, letter dated 10.7.2019 written to the Labour Commissioner Mark-3, letter dated 10.7.2019 Mark-4, letter dated 14.7.2019 Mark-5, letter dated 31.7.2019 Mark-6, letter dated 29.7.2019 Ext. PW1/G, letter dated 1.8.2019 Mark-7, letter dated 19.8.2019 Mark-8, letter dated 23.8.2019 Mark-9, DDR dated 3.8.2019 Ext. PW1/H, mail dated 3.8.2019 Mark-10, notice dated 12.9.2019 Ext. PW1/J, transfer order dated 3.8.2019 Ext. PW1/K, demand notice dated 10.8.2019 Ext. PW1/L, application dated 22.8.2019 Ext. PW1/M. He has also examined Shri Ashu Kumar by way of affidavit Ext. PW2/A.

7. Respondent has examined Shri Hitesh Kotia s/o Shri R.S. Kotia by way of affidavit Ext. RW1/A wherein he reiterated the facts mentioned in the reply. He also produced on record copy of reply dated 30.9.2019 Ext. RW1/B, copy of email dated 3.8.2019 Ext. RW1/C, copy of email dated 8.8.2019 Ext. RW1/D, copy of email dated 13.8.2019 Ext. RW1/E, copy of letter dated 3.8.2019 Ext. RW1/F, copy of letter dated 13.8.2019 Ext. RW1/G, copy of attendance record of employees Ext. RW1/H (14 pages), copy of letter dated 27.6.2018 Ext. RW1/J, copy of letter dated 26.12.2019 Ext. RW1/K, copy of letter dated 19.5.2021 Ext. RW1/L, copy of receipt dated 22.5.2021 Ext. RW1/M and copy of resolution dated 11.5.2015 Ext. RW1/N.

8. I have heard the learned Counsel for the petitioner as well as learned AR/Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	No
Issue No. 2	:	No
Issue No .3	:	Yes
Issue No. 4	:	Yes
Relief.	:	Claim petition is dismissed allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1, 3 and 4

10. All these issues are interlinked and interconnected and taken up together for the sake of evidence to avoid repetition of evidence.

11. Certain facts of the present claim are that according to petitioner he was employed as IT Engineer (Technical Support) *w.e.f.* 10.3.2011. The petitioner has asserted that he falls within the definition of workman which fact is denied by the respondent stating that the salary of the petitioner was Rs.10000/- or above. On the other hand the respondent asserted that the petitioner was engaged as Tech. Support Engineer *w.e.f.* 11.3.2011. The dispute between the petitioner and respondent is however governed under the Industrial Disputes Act as well as Working Journalist and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. The petitioner falls under the category of non journalist newspaper employee is covered under Section 9 to 13A of the Governing Act for seeking the relief under the Industrial Disputes Act.

12. Document Mark-2 dated 10.7.2019 is the complaint made by the petitioner and his colleagues against the respondent for non compliance of recommendations of Majithia Wage Board, alleging that the respondent were seeking forced resignation and threatening the workman with transfer on less salary and outside station. Vide Ext. PW1/G Principal Secretary, Labour & Employment had directed the Labour Commissioner to take necessary action on the complaint made by petitioner and others who further directed the Labour Officer Dharamshala to investigate and take the legal action on the said complaint vide Mark-7. These documents reflect that petitioner and others had made complaint to the authorities regarding non implementation of Majithia Wage Board recommendations and other alleged oppressive measures by the respondent against petitioner and others in July, 2019.

13. On 3.8.2019 the complaint was made to the police authority and that petitioner and others were being harassed and not allowed to enter the company premises by the respondent management. The contention of the respondent is however based on the denial of allegations made to the labour authorities and it is asserted that management had not terminated the services of applicant/claimant but had rather given promotion to the applicant petitioner in Digital Media Production Department *w.e.f.* 3.8.2019 at a new place of posting Shimla with increment of Rs.1100/- per month plus Rs.2500/- per month as station allowance. The mail qua promotion was sent to the petitioner on 3.8.2019 at its official e-mail address i.e. rahulkangra.sone@gmail.com. The petitioner Rahul Chaudhary has stated in his cross-examination that "*it is incorrect that I was promoted by the company on 3.8.2019 and transferred to Shimla. It is incorrect that when I did join at Shimla a letter dated 6.8.2019 was sent by the respondent to me with the directions to join at Shimla. I do not know that I was relieved on 13.8.2019 by the company. Self stated some mails were sent on my personal e-mail which I used to not check and no such official correspondence was sent on my personal e-mail earlier. It is correct that i have received a letter dated 13.8.2019 through*

registered post. It is correct that in the year 2019 Sh. Anand Sharma was H.R. Manager of the company. It is correct that my personal E-mail is rahulkangra.sonu@gmail.com. It is incorrect that I have received E-mail of Sh. Anand Sharma dated 13.8.2019 on my personal E-mail account. Self stated that I never check my personal E-mail account. It is correct that i have received letter dated 3.8.2019 through registered post on 13.8.2019. Though denied having received a mail qua his transfer. He has admitted that e-mail was sent on his official e-mail address. He admits the receiving of letter dated 13.8.2019 by way of registered post and also letter dated 3.8.2019 by way of registered post on 13.8.2019. According to petitioner there were being terminated indirectly by the respondent. The demand notice however was issued by the petitioner on 10.8.2019. Thus his evasive reply qua service of transfer notice does not find any ground. This implies that he was aware of the transfer even before the notice dated 13.8.2019. The petitioner had sent a demand notice through speed post to the respondent company which is on record dated 10.8.2019. This demand is with regard to defective, arbitrary and malafide transfer only. Petitioner had allegedly report before police when he was not allowed to join at Matour after 3.8.2019 but made no attempt to join at new place of posting.

14. The present dispute is with respect to illegal termination of the petitioner by the respondent but respondents have alleged voluntary abandonment of the work and that merely relieving the petitioner consequent to transfer is not a dispute under Sections 25-F and 25-N of the Industrial Disputes Act, 1947.

15. Hon'ble High Court of Himachal Pradesh in **Ramesh Kumar vs. Food Corporation of India, 2013 LLR 709** has held in para no.11 and 14 as follows:—

"In view of the above, the legal position on the issue of transfer can be summarized as under:—

(1) Transfer is a condition of service.

(2) It does not adversely affect the status or emoluments or seniority of the employee.

(3) The employee has no vested right to get a posting at a particular place or can choose to serve at a particular place for a particular tenure.

(4) It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.

(5) Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.

(6) There is a very little scope of judicial review by the Court / Tribunal against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or mala fides is established.

(7) In case of mala fides, the employee has to make specific averments and should prove the same by adducing implacable evidence.

(8) The person against whom allegation of male fide is alleged is to be impleaded as a party by name.

(9) Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Departmental personnel.

(10) The Court does not have a power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children as consideration of this issues fall within the exclusive domain of the employer.

(11) If the transfer order is made in mid-academic session of the children of the employee, the Court / Tribunal cannot interfere. It is for the employer to consider such a personal grievance".

"14. The Hon'ble Supreme Court in State of Haryana & Ors., versus Kashmir Singh & Anr., (2010) 13 SCC 306, has observed that the Court should not interfere with purely administrative matters except where absolutely it is necessary on account of violation of any fundamental or other legal right. The Hon'ble Supreme Court has also reiterated the law in Registrar General, High Court of Judicature of Madras versus R.Perachi & Anr., (2011) 12 SCC 137, by observing that transfer is an incident of service and if transfer is made on administrative grounds and judicial review is limited and the High Court has not to interfere with the transfer lightly".

16. The Hon'ble High Court of H.P. in **State of H.P. & Ors. vs. Presiding Judge & Anr., 2006 LLR 1020** has held in paras 18 and 23 as follows:—

"18. To attract Section 25-F of the Act, termination of the services of an employee must be by some act of the employer. If there is no termination of the services by the employer out of his own volition but the disengagement or discharge of the employee is caused on account of some act or event over which the employer has no control, then in my view, it cannot be said to be retrenchment of services of a workman within the meaning of Section 2(oo) of the Act. The essence of retrenchment is the termination of workman's services by some act on the part of the employer. In the instant case, the employer is not expected to wait for two years for workman to return who had also sent notice at her admittedly known address.

23. In the present case, as noticed above, the workman remained absent without any information to the employer or communicating any reasons for her absence and suddenly wanted to join her duties after two years with a certificate that she was advised to live with her husband during this period. In my view, voluntary absence which amounts to voluntary abandonment and voluntary retirement from the work would not amount to retrenchment within the meaning, of Section 2(oo) of the Act and therefore, Section 25-F of the Act is not attracted in the facts and circumstances of this case".

17. Hon'ble High Court of Delhi in **Shri Gian Chand versus Secretary (Labour) Delhi Administration** in **C.W. No.2339/93 & C.M. 3767/93** has held that *failure of an employee to comply with the transfer order does not amount* to termination but abandonment. The intention has to be inferred from the act and conduct of the party and is a question of fact.

18. In the light of above precedent it is important to observe that during the cross-examination of the petitioner he has revealed that he was not interested to get promotion or join a new place of posting. He despite notice to transfer order did not convey his intention not to join at new place of posting nor his intention to forgo the promotion. He admits that there is branch of company at Shimla. He alleges that he was not allowed to enter into the company after 3.8.2019 but he also admits that there is no letter of his termination issued by company till date. He admits that transfer is a prerogative of company. The emails sent by respondents were admittedly on the email

rahulkangra.sonu@gmail.com which is email account of petitioner. Thus he was fully aware of the transfer orders. This conduct of the petitioner points towards the fact of complete abandonment of his job after 3.8.2019. The industrial dispute was raised on 10.8.2019 but no reason for joining of new place of posting was conveyed. He has not raised any objection with the respondents alleging change of service condition. The Hon'ble Supreme Court in **The Tamil Nadu Agricultural University & Anr. vs. R. AGILA ETC.** in **Special Leave of Appeal (Civil) Nos. 13070-13075 of 2022** has held in paras no.3,4 and 7 as follows:—

"3. It is established as a part of service law jurisprudence that transfer is an exigency of service. As such, when a person becomes an employee of the Government, the incidence of transfer becomes inherent in the terms of service unless it is specially barred under certain provisions governing conditions of service.

4. Under such terms and conditions of service, an employee has no right to remain absent or refuse to join the new place of transfer once relieved from their current place of posting. The employee is entitled to avail all available remedies for redressal of grievances, but it does not entitle them to not comply with the transfer orders. The employee is well within his rights to join the transferred place of posting and still continue to avail the remedies available under the law for redressal of his grievances against the transfer.

7. We also find it relevant to quote here a judgment of this Court on the same subject in Tushar D. Bhatt v. State of Gujarat, (2009) 11 SCC 678

"16. The legal position has been crystallised in a number of judgments that transfer is an incidence of service and transfer are made according to administrative exigencies.

17. In the instant case, in the entire tenure of more than 18 years, the appellant was only transferred twice. The appellant's transfer order cannot be termed as mala fide. The appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorisedly absent from official duties from 11-10-1999 to 27.4.2000 i.e. more than six months. In the interest of discipline of any institution or organization such an approach and attitude of the employees cannot be countenanced.

18. In Gujarat Electricity Board v. Atmaram Sungomal Poshani [(1989) 2 SCC 602: 1989 SCC (L&S) 393: (1989) 10 ATC 396: AIR 1989 SC 1433] this Court had an occasion to examine the case of almost similar nature. This Court observed as under:

"4. ....Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the public servant concerned must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place of the other".....

19. Hon'ble Supreme Court in **U.P. Singh vs. Punjab National Bank, 2024 LLR 119** has held in para 10 as follows:—

> "10. A person aggrieved by the order of transfer cannot sit at home and decide on his own that the order is illegal or erroneous and he will not comply with the same. If the workman had any grievance, he could have availed of his remedy available against the same; otherwise, he was duty-bound to comply with the same. Failure to avail of any remedy also would mean that he had accepted the order and was duty-bound to comply with the same. At a later stage, he could not take a plea that the order being erroneous, no consequence would follow for its non-compliance".

20. The Hon'ble High Court of H.P. in **Smt. Rani Sharma and Others vs. State of Himachal Pradesh and Another, 2019 LLR 856** has held in paras 32 to 35 as follows:—

> "32. Coming back to the facts of this case. As already discussed above, it is not in dispute that the case of the workmen was not taken up with the appropriate Government either by appreciable number of employees or by the Management. In other words, the cause of the workmen was not espoused either by number of workmen or by the Management. The cause was independently espoused by both the workmen in their individual capacity before the appropriate Government. Such dispute, which was individually raised by the workmen feeling aggrieved by the issuance of the transfer order, by no stretch of imagination, could have been referred to Industrial Tribunal-cum-Labour Court by the appropriate Government under Section 10 of the Industrial Disputes Act. That being so, adjudication upon the said Reference by the learned Labour Court, which stands assailed by way of the writ petition filed by the employer, is per se void ab initio and not sustainable in the eyes of law.
>
> 33. In order to give an opportunity to the learned Counsel for the workman to demonstrate that an Industrial Dispute qua transfer orders could have been individually espoused by them under the Industrial Disputes Act, sufficient time was given, but he could not substantiate in law that such a dispute could have been individually raised by them and subsequently referred by the appropriate government by way of a Reference for adjudication to the Industrial Tribunal-cum-Labour Court.
>
> 34. Thus, as it is apparent that no individual Industrial Dispute could have been raised by the workmen against the transfer order, the Reference made by the appropriate Government on the demand notice of the workmen was bad in law and not in consonance with the provisions of Section 2(k) of the Industrial Disputes Act. As a natural corollary, the adjudication of the said Reference by the learned Tribunal by way of award dated 04.08.2010 in Reference No. 36 of 2006 is also thus void ab initio and not sustainable in law.
>
> 35. Accordingly in view of discussion held herein-above, both the Reference made by the appropriate Government as well as the award dated 04.08.2010 passed in Reference No. 36 of 2006, titled as Baldev Sharma and another vs. The Area Manager, Bata India, by learned Tribunal are quashed and set aside. Consequently, the writ petition filed by the Company, i.e. CWP No. 4993 of 2011, is allowed whereas the writ petition filed by the workmen, i.e. CWP No. 8419 of 2010, is dismissed. No orders as to costs".

21. Learned Counsel for the petitioner has vehemently argued that even if the petitioner had failed to report at new place of posting respondent did not follow due process before dispensing with the services of the petitioner hence termination of the petitioner was void and illegal.

22. The peculiar circumstances of the present case show that in order to constitute termination the intention of petitioner to continue his duties was relevant. Petitioner however did not bother to join his duty at new place of posting after which he was at liberty to raise appropriate dispute if any qua victimization by way of transfer or otherwise. He could not produce evidence qua his response if any to the various notices including relieving notice dated 13.8.2019. The pleadings of the respondent read in para no.6 page 5 of the reply as follows:—

> "The management has never terminated the services of applicant rather given him promotion *vide* promotion letter dated 03.8.2019 and if the applicant is ready to accept his promotion and joining at new place of posting at Shimal the management is also ready to take him back in service with continuity of service but without back wages on the principle of '**No Work No Pay".**

23. In view of this averment the relevant notice Ext. RW1/G would not amount to termination. Petitioner has conceded unequivocally that he did not intent to join new place of posting or to avail promotion thus the intention of petitioner qua non compliance of principle of natural justice and opportunity of being heard is no more relevant in the present case. The conduct of the petitioner amounts to wilful abandonment and deliberate non compliance of transfer order from 3.8.2019 to 13.8.2019. Pertinent to observe that even being aware of his transfer the petitioner did not join his duty or raise any objection with the respondent in this regard.

24. As laid down by the Hon'ble High Court of H.P. in **Rani Sharma's case (supra)** the crux of the dispute between petitioner and respondent was transfer order and not the dismissal, discharge and retrenchment. As the petitioner has abandoned the job thus he is not entitled to any relief under Section 25 Clause F of the Industrial Disputes Act.

25. Learned counsel for the petitioner has also argued that by way transfer and relieving order the respondent has not complied with the provisions of Section 33 Clause 1 of the Industrial Disputes Act. In view of the ongoing dispute between the parties under Section 17 Clause 1 of the Governing Act with the appropriate authority. Pertinent to mention here that there is no evidence to establish that transfer of the petitioner had caused change in his service condition or prejudiced him in any manner. On the other hand he failed to join at the relevant place of posting with no plausible excuse. In the pleadings of the present claim also there is no mention of the prejudice which has been caused to the petitioner by way of transfer or proof of any change in service condition which would have affected him adversely. No evidence has been led in this regard. Thus the petitioner cannot avail benefit under Section 33 Clause 1 of the Industrial Disputes Act. In view of the above discussions and the evidence which has been led before this court there does not appear to be any expressed retrenchment or intentional termination of services of the petitioner by the respondent hence issues no.1, 3 and 4 are decided in the favour of the respondent.

Issue No. 2

26. It appears from the statement of witness that there was no formal termination of the petitioner by the respondent. Respondent in reply to the claim of the petitioner has shown their willingness to allow petitioner to join new place of posting. The petitioner has averred in the statement that he is now willing to join new place of posting. Thus nothing in the claim would preclude this court to disallow the petitioner to join the place of posting/transfer and respondent shall gave an opportunity to join at his new place of posting/transfer in case he makes himself available for joining within 15 days of receiving the copy of this award. The question of back wages cannot be considered as petitioner has not joined his new place of posting as per transfer order and the principle of no work no pay would apply as the petitioner had not led any cogent evidence with regard to reason for no joining at new place of posting or justify his absence. In these

circumstances no benefits relief can be granted in the favour of the petitioner. Hence this issue is decided accordingly.

RELIEF

27. In view of my discussion on the issues nos. 1 to 4 above, the present claim made by the petitioner against the respondent is not maintainable and the reference is decided accordingly. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of April, 2025.

Sd/-
(PARVEEN CHAUHAN**),**
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE,LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. :25/2021
Date of Institution : 23.2.2021
Date of Decision : 28.4.2025

Shri Yash Paul Singh s/o Late Shri Madan Lal, r/o Village & P.O. Durgella, Tehsil Shahpur, District Kangra, H.P. ..*Petitioner.*

Versus

M/s Divya Himachal Prakashan Pvt. Ltd., Head Office at Kangra-Pathankot Marg, Mataur, Tehsil & District Kangra, H.P. through its MD. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.D. Sharma, Ld. Adv.

For the Respondent : Sh. N.L. Kaundal, Ld. AR
: Sh. Vijay Kaundal, Ld. Adv.

AWARD

This is a claim petition under Section 2-A (2) of the Industrial Disputes Act, 1947 filed directly before this court after completion of mandatory period of 45 days of filing of dispute before the Conciliation Officer.

2. The brief facts as stated in the claim petition are that the applicant/workman was employed as Sub Editor on 15.7.2008 by the management M/s. Divya Himachal Prakashan Pvt. Ltd. without appointment letter and the applicant was deputed to work in head office of respondent/management situated at Kangra-Pathankot Marg, Old Mataur, Kangra, H.P. The salary of applicant/workman was paid by the respondent management in his salary account No.65092740411 in the branch of State Bank of Patiala (now merged into SBI) branch at Kangra city. After the appointment of applicant the provident fund was not deducted by the respondent and same was started to deduct from 1.3.2011. It is asserted that claimant was promoted as Sr. Sub Editor *w.e.f.* 1.4.2016 without any promotion letter. It is asserted that the respondent management is a body corporate registered under the Companies Act, 1956 (amended as Act, 2013) having its registered office at Kangra-Pathankot Road, Old Mataur, Kangra, H.P. and primary business of company is to publish and print a newspaper in the name and style of 'Divya Himachal'. The printing centre of the respondent management is also situated in the same establishment at Kangra-Pathankot Marg, Old Mataur, Kangra, H.P. and registered as partnership firm in the name and style of M/s Samarpan Printers and Shri Bhanu Dhamija is the Chairman-cum-Managing Director and Shri Anil Soni is the Director-cum-Editor-*cum*-Printer/publisher of the company and its newspaper 'Divya Himachal' and both are the proprietors/partners of the Printing Press M/s Samarpan Printers as well as functional integrality and common control of the managements of both establishment of respondent/management. The service conditions and wages of applicant/workman were governed by The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, hereinafter referred to as the 'Governing Act' enacted by the Parliament. The applicant/workman falls under Section 2(c) and 2 (f) of the Governing Act and defined a non-journalist newspaper employee of the concerned newspaper establishment as well as applicant/workman was also workman in terms of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is asserted that the respondent/management and printing press i.e. M/s Samarpan Printers are covered under the Governing Act and falls within the definition of Single Newspaper Establishment in terms of Section 2(d) read with Schedule of the Act, whereas Daily Divya Himachal is a Hindi daily newspaper of the respondent/management falls under Section 2b of the Governing Act. In terms of Section 14 of Governing Act the Industrial Employment (Standing Orders) Act, 1946 applicable to the respondent/management but the respondent/management not certified its standing orders in terms of Section 14 of Governing Act and in terms of the Industrial Disputes Act, 1947 the respondent/management falls within the provisions of Chapter VB and also in terms Section 2(m) of Factories Act, 1948 the respondent management falls within the definition of the factory. The Government of India, Ministry of Labour vide notification dated 24.5.2007 constituted the Wage Boards in terms of Section 9 and 13B of the Governing Act to review and determine the wages and service conditions of Newspaper Employees including that of the applicant/workman. Thereafter the Wage Board submitted its recommendations to the Government on 31st December, 2010 and the Central Government accepted the same vide notification dated 11.11.2011 made the award enforceable subject to the decision of Hon'ble Supreme Court in writ petitions filed by the owners of newspapers against the Wage Board and its recommendations. Wage Board submitted its recommendations on 31st December, 2010 vide notification dated 11.11.2011 the award was made enforceable. The Hon'ble Supreme Court vide its judgment in ABP Pvt. Ltd. & Anr. Vs. Union of India & Ors. AIR 2014 SC 1228 dismissed the objections and petition against Majithia Wage Board and its recommendations and the Newspaper Establishment were directed to implement the same *w.e.f.* 11.11.2011. It was also directed that arrears be paid upto March, 2014. It is alleged that respondent management did not implement recommendations of Majithia Wage Board and did not revise wage and interim relief of the employees who were continuously demanding the revised wages and service conditions. In the contempt petition (Civil) No. 411 of 2014 reported in Avishek Raja & Ors. vs. Sanjay Gupta, AIR 2017 SC 2955, the Hon'ble Supreme Court further passed directions and clarifications on some legal issues in this judgment on 19.6.2017. In accordance with this judgment the newspaper establishment was under obligation to pay the dues to the confirm employees along-

with contractual employees in terms and directions passed in previous judgment dated 7.2.2014. It is again reiterated by claimant that he was not being paid his dues and wages in accordance with the Wage Board notification and the management was disobeying the orders of Hon'ble Supreme Court. It is prayed that the act of the management terminating the services of petitioner be held to be illegal unjust and void. Petitioner may be reinstated in service from the day from he was ousted from service along-with full back wages, seniority and other consequential/past service benefits. It is also prayed that petitioner be held entitled for compensation on account of act of victimization by the respondents. It is alleged that the claimant/workman was not paid his dues and wages accrued under the Wage Board Notification which was ultimately merged with the directions of judgments dated 7.2.2014 and 19.6.2017 passed by the Hon'ble Supreme Court. The employees including the claimant/petitioner had filed a contempt before Hon'ble Supreme Court wherein the Hon'ble Supreme Court directed and clarifications on some legal issues in its judgment on 19.6.2017. The claimant/workman had demanding the dues since judgment dated 7.2.2014 however the respondent had made excuses one after the other and now refused to pay the same to the claimant and he was pressurized for forced resignation. The management started victimization all employees inclusive of claimant/workman who demanded their legitimate dues. The victimization was resorted to by forced resignation of large number of employees but the claimant/workman had denied giving forced resignation. It is asserted that the claimant/workman along with other aggrieved employees had filed a complaint with regard to forced resignation of employees by the management before Additional Chief Secretary (Lab. & Emp.) of H.P. Government. The Labour Commissioner of H.P. and Labour Inspector, Dharamshala vide letters dated 10.7.2019, 14.7.2019 and 21.7.2019 respectively. Thereafter Principal Secretary (Lab. & Emp.) of H.P. Govt. had issued the directions to the Labour Commissioner of H.P. for necessary action on it vide letter dated 29.7.2019 and 19.8.2019 respectively. Labour Commissioner through Deputy Labour Commissioner had issued directions to the Labour Office Dharamshala vide letter dated 1.8.2019 and 23.8.2019. As per the directions issued by the office of Labour Commissioner dated 1.8.2019 the claimant/workman had filed claim of his due arrears of difference of old and revised wages alongwith arrears of interim relief and other allowances before the designated authority under Section 17(1) of the Governing Act. Specifically prohibited by the express provision of Section 16-A of the Working Journalist and Other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 for victimization of employees for demanding their dues from the management but the management continued to take vindicate action against the employees including the claimant/workman in the present matter. While disregarding the statutory provision by the respondent by way of threatened to claimant/workman to withdraw the application filed by him under Section 17(1) of the Governing Act before the designated authority-*cum*-Labour Officer Dharamshala on 3.8.2019 as well as pressurized the claimant along-with other colleagues to extract the signatures on forced resignation. When the claimant had denied following the above illegal, unjust, arbitrary and unconstitutional directions of the officials of the management, the services of the claimant were terminated on 3.8.2019 by verbal/oral order *w.e.f.* 4.8.2019 along-with four colleagues namely Rajhuvinder Singh, Ashu, Rahul Choudhary and Vinod Kumar. It is asserted that the claimant had tried to join the duty but he was not allowed to join his duty as well as he was not allowed to enter the gate of the office at Purana Mataur (Kangra). Thereafter claimant along-with other colleagues have filed their claim under Section 17(1) of the Governing Act before the designated authority-cum-Labour Offier Zone Kangra at Dharamshala. It is asserted that after the victimization by way of pressurizing to extract the forced resignation and restrain to join the duty by the respondent/management the claimant along-with other colleagues have filed complaint before SHO, Police Station Kangra. It is asserted that on 5.8.2019 the claimant along-with four workmen had also filed applications under Section 16-A of the Governing Act against the oral/verbal termination of their services *w.e.f.* 4.8.2019. It is asserted that after knowing about the complaints of the verbal/oral termination and victimization filed by the applicant and other four colleagues, the respondent/management had planned a new conspiracy by way of issuing their malafide and back dated transfer-cum-new responsibility (promotion) orders however these malafide transfer orders

were received by the claimant and other four colleagues after expiry of last date of joining at new station and these orders were clearly in violation of law of land as in absence of the appointment letter, agreement of service conditions and certified standing order the job of the applicant was not transferrable. Further the claimant had received this letter on 10.8.2019 issued by HR department with signatures of Deputy Manager, HR Sh. Anand Sharma. In accordance with postal record the transfer letter was sent by register post on 5.8.2019 but deliberately the back date was mentioned on it as 3.8.2019. It is alleged that the before issuing the transfer letter the respondent/management had already terminated the services of the workman orally/verbally on 4.8.2019 and restrained the claimant to join his duty. On 10.8.2019 claimant/workman had sent a demand notice by speed post to the Chairman-cum-Managing Director of the respondent company regarding illegal, unjust and malafide transfer orders and the same was deliberately not received by the addressee and returned back on 22.8.2019. This demand notice was espoused by the co-workers and Newspaper Employees Union of India. It is asserted that the claimant had received a back dated letter of termination send through speed post and same was not signed by the appointing authority of respondent/management and respondent/management had given false, arbitrary, fabricated, unjust and voidable reasons to terminate the services of the claimant. It is asserted that the order of termination dated 13.8.2019 was clearly in violation of the principles of natural justice as there was no opportunity or so cause notice given to listen the claimant/workman. The action of the management by issuing illegal termination and malafide transfer orders was contrary to the provisions of the Industrial Employment (Standing Orders) Act, 1946 is applicable to the services of workman in terms of Section 14 of the Governing Act read with Industrial Employment (Standing Order) Himachal Pradesh Rules, 1973 and Amendment Rules 1991. It is further asserted that the termination order dated 13.8.2019 was illegal and same was in violation of the provisions of Section 33 of the Industrial Disputes Act. The respondent/management had not seeking the approval of Labour Officer Dharamshala in terms of Section 33 of Industrial Disputes Act before terminating the services of the claimant as the proceedings under Section 17(1) were pending before the said authority. On 22.8.2019 the claimant had filed application/demand notice under Section 2-A of the Industrial Disputes Act before the Conciliation-cum-Labour Officer, Dharamshala and the said authority had issued notice to the respondent vide letter dated 20.9.2019 and the conciliation proceedings were initiated on 30.9.2019. The claimant/workman submitted that the illegal, arbitrary, unfair, malafide, voidable and unjust act of management by issuing firstly verbal/oral order *w.e.f.* 4.8.2019 and then written order of the termination on 13.8.2019 without any prior notice is liable to be quashed and set aside. The claimant is unemployed due to illegal and unjust act of the respondent/management and still facing financial hardships for livelihood. It is prayed that the act of the management terminating the services of petitioner be held to be illegal unjust and void. Petitioner may be reinstated in service from the day from he was ousted from service along-with full back wages as per recommendations of Majithia Wage Board, seniority and other consequential/past service benefits along with litigation costs.

3. In reply filed on behalf of the respondent whereby preliminary objections qua maintainability, abuse of process of law, claimant not falling under definition of 'workman' under the Industrial Disputes Act, locus standi, resjudicata and wilful abandonment of service by the petitioner have been raised. On merits, it is admitted that the petitioner was engaged *w.e.f.* 15.7.2008 but it is denied that he was appointed as Sub Editor, whereas the claimant had worked as Sub Content Writer. It is further submitted that the present application under Section 2-A of the Industrial Disputes Act, 1947, the applicant cannot be raised any issue with regard to Employees Provident Fund. It is denied that there was functional integrality and common control in the managements of M/s Divya Himachal Prakashan Pvt. Ltd. and M/s Samarpan Printers. It is asserted that the same person can be an owner of two different establishments but does not mean that there is a functional integrality and common control in the managements of both establishments. It is further asserted that Divya Himachal Prakashan Pvt. Ltd. and Samarpan Printers are two different establishment having different registration number, EPF Code number, PAN number, GST number

etc. It is asserted that the applicant is not fall under the definition of workman within the meaning of Section 2(S) of the Industrial Disputes Act, 1947 as such the applicant was drawing more than Rs.10000/- per month at the time of this promotions. It is asserted that the respondent establishment is not fall under the definition of factory as defined under the Factory Act, 1948. It is further asserted that the Labour Department Himachal Pradesh had not covered the respondent establishment under the Factory Act, 1948. It is further asserted that the Standing Orders had already been submitted before the competent authority for certification and the same is still pending for certification. Moreover the Model Standing Order Act, 1945 is applicable to the respondent. It is further mentioned that contents of the petition regarding the Majithia Wage Board compliance do not have any relevancy in the light of the reference which is referred for adjudication to this court. Moreover, regarding Majithia Wage Board now the petitioner had filed separate claim petition which is pending before this court. It is denied that the applicant was terminated along-with others S/Sh. Raghuvinder Singh, Yashpal Singh, Ashu Kumar and Vinod Kumar but the true fact it that all the above named employees as well as applicant had been promoted and transferred to new place of posting and promotion letters were mailed in their mail account and also sent in their home address through registered post but all have not joined at their new place of posting and abandoned the job. It is denied that the respondent management victimized the applicant and forced him to submit his resignation. It is asserted that the police had not conducted any investigation in this regard against the respondent management till date. It is further asserted that fake and false stories have created by the authorized representative of the applicant with an intention to create pressure upon the respondent management to pay Majithia Wage Board. It is asserted that the respondent management had not made any pressure upon the applicant to give his resignation from service. The applicant had written totally false story in the present petition whereas the true fact is that the applicant voluntary given his option under paragraph 2(J) of the Majithia Wage Board recommendations to retain his the then existing wages/emoluments. The management had also not terminated the services of applicant rather the management had given promotion to the applicant as City Report, Digital Media TV *w.e.f.* 3.8.2019 in new place of posting at Manali Office and also given him increment of Rs.1400/- per month plus Rs. 2500/- per month as station allowance and asked him to join new station on or before 7.8.2019. The promotion letter was also emailed to the claimant in his email Id i.e. yashpaul6381@gmail.com as filled/submitted by him at the time of his enrolment/joining but the applicant had not received the promotion letter and left the office and also not given any response to the mail. Thereafter the promotion letter was sent to the applicant *vide* registered letter dated 5.8.2019 under receipt no.EE790823965IN in his home address but again no response from the applicant. Thereafter the management had given him one more chance to join at Manali office on or before 12.8.2019 and mail in this regard was sent in his email Id which was wilful negligence, disobedience and sheer indiscipline, therefore the applicant had relieved from service with immediate effect *w.e.f.* 13.8.2019 and information in this regard was sent in his email id as well as hard copy of the same was sent to him through registered post on 16.8.2019 vide receipt no.EE792845606IN. It is asserted that the management had never terminated the services of applicant, rather given him promotion vide promotion letter dated 3.8.2019 and if the applicant was ready to accept his promotion and joining at new place of posting at Manali the management was also ready to take him back in service with continuity of service but without back wages in according with the principle of No work no pay. It is asserted that the respondent has not mentioned back date in promotion letter as 3.8.2019 but the true fact is that the said promotion letter was drafted in the eve of 3.8.2019 and could not be sent to the applicant. On 4.8.2019 it was Sunday and the promotion letter was posted to applicant on 5.8.2019. It is further asserted that due to holiday of second Saturday on 14.8.2019 and Sunday on 15.8.2019 the reliving letter was sent through post on 16.8.2019. It is further asserted that the information regarding reliving from services was sent to the applicant through mail dated 13.8.2019 and the same was signed by the then Dy. Manager (HR) Mr. Anand Sharma. It is asserted that the applicant had not accepted the promotion order and not join at Manali office without any communication in writing and this act of the applicant was treated as wilful negligence, disobedience and sheer indiscipline,

therefore the applicant was relieved from service with immediate effect *w.e.f.* 13.8.2019 and information in this regard was sent in his email id as well as hard copy of the same was sent through registered post dated 16.8.2019 vide receipt no.EE792845606IN. It is further submitted that the applicant possess ample cultivated land and earning his livelihood as an agriculturist. Other averments and allegations made in the claim petition were denied and it is prayed that the claim deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP

2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? ..OPP

3. Whether the petitioner is not a workman for the purpose of this reference. If yes its effect? ..OPR

4. Whether the petitioner has abandoned the services in the manner as alleged. If yes its effect? ..OPR

Relief.

6. In order to prove his case the petitioner has produced on record his affidavit Ext. PW1/A wherein he reiterated the fact stated in the petition. He also produced on record copy of letter dated 12.7.2019 Ext. PW1/B, and another letter dated 29.7.2019 Ext. PW1/C, copy of letter Ext. PW1/D.

7. Respondent has examined Shri Hitesh Kotia s/o Shri R.S. Kotia by way of affidavit Ext. RW1/A wherein he reiterated the facts mentioned in the reply. He also produced on record copy of reply dated 30.9.2019 Ext. RW1/B, copy of email dated 3.8.2019 Ext. RW1/C, copy of email dated 8.8.2019 Ext. RW1/D, copy of email dated 13.8.2019 Ext. RW1/E, copy of letter dated 3.8.2019 Ext. RW1/F, copy of letter dated 13.8.2019 Ext. RW1/G, copy of attendance record of employees Ext. RW1/H (12 pages), copy of letter dated 27.6.2018 Ext. RW1/J, copy of letter dated 26.12.2019 Ext. RW1/K, copy of letter dated 19.5.2021 Ext. RW1/L, copy of receipt dated 22.5.2021 Ext. RW1/M and copy of resolution dated 11.5.2015 Ext. RW1/N.

8. I have heard the learned Counsel for the petitioner as well as learned AR/Counsel for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	:	No
Issue No. 2	:	No
Issue No. 3	:	Yes
Issue No. 4	:	Yes
Relief	:	Claim petition is dismissed allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1, 3 and 4

10. All these issues are interlinked and interconnected and taken up together for the sake of evidence and avoid repetition of evidence.

11. Certain facts of the present claim are not disputed i.e. petitioner was employed as Sub Editor *w.e.f.* 15.7.2008. The petitioner has asserted that he falls within the definition of workman which fact is denied by the respondent stating that the salary of the petitioner was Rs.10000/- or above. On the other hand the respondent asserted that the petitioner was engaged as Sub Content Writer *w.e.f.* 15.7.2008. The dispute between the petitioner and respondent is however governed under the Industrial Disputes Act as well as Working Journalist and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. The petitioner falls under the category of working journalist newspaper employee and is covered under Section 9 to 16 of the Special Act for seeking the relief under the Industrial Disputes Act, 1947.

12. Document Ext. PW1/B dated 10.7.2019 is the complaint made by the petitioner and his colleagues against the respondent for non compliance of recommendations of Majithia Wage Board, alleging that the respondent were seeking forced resignation and threatening the workman with transfer on less salary and outside station. Vide Ext/ PW1/C Principal Secretary, Labour & Employment had directed the Labour Commissioner to take necessary action on the complaint made by petitioner and others who further directed the Labour Officer Dharamshala to investigate and take the legal action on the said complaint vide Ext. PW1/D. These documents reflect that petitioner and others had made complaint to the authorities regarding non implementation of Majithia Wage Board recommendations and other oppressive measures by the respondent against petitioner and others in July, 2019.

13. On 3.8.2019 the complaint was made to the police authority and that petitioner and others were being harassed and not allowed to enter the company premises by the respondent management. The contention of the respondent is however based on the denial of allegations made to the labour authorities and it is asserted that management had not terminated the services of applicant/claimant but had rather given promotion to the applicant petitioner as City Report, Digital Media TV *w.e.f.* 3.8.2019 at a new place of posting Manali with increment of Rs.1400/- per month plus Rs. 2500/- per month as station allowance. The mail qua promotion was sent to the petitioner on 3.8.2019 at its official e-mail address *i.e.* yashpaul6381@gmail.com. The petitioner Yash Paul Singh has admitted in his cross-examination that he was promoted and transferred on 3.8.2019 and also that he has not joined at the new place of transfer till date. He asserted that he received the letter of transfer late i.e. after 13.8.2019 and officers of respondent did not talk to him. He denied receiving email dated 3.8.2019 and expressed ignorance regarding mail dated 8.8.2019. He has produced on record demand notice dated 10.8.2019 prior to notice sent on 13.8.2019 which shows that he was well aware communication made by respondent regarding his transfer. He denied that the order of transfer and date of joining were receiving by him through email but record shows that he was aware of these orders which is evident from demand notice dated 10.8.2019. Petitioner states that he has written a letter to the Editor in Chief regarding the cancellation of his transfer but he has not produced on record any such letter and he has further admitted that he could not produce such letter in the court. The petitioner admits that he did not join after the reply had been filed by the respondent before Conciliation Officer. He admits that at the time of promotion he was given enhancement in salary of Rs.3900/-. He has expressed his unwillingness to work at Manali but no plausible reason has been cited or communicated in writing to the respondent in this regard. Though it is mentioned by the petitioner that he lodged report with the police when he was not allowed to join after 3.8.2019 however this conduct of the petitioner does not show that he was

willing to work as he has not bothered to join at new place of posting in order to show his bonafide conduct and willingness to continue with work. The petitioner had sent a demand notice through speed post to the respondent company on 10.8.2019. This demand is also with regard to defective, arbitrary and malafide transfer only.

14. The present dispute is with respect to illegal termination of the petitioner by the respondent but respondents have alleged voluntary abandonment of the work and that merely relieving the petitioner consequent to transfer is not a dispute under Sections 25-F and 25-N of the Industrial Disputes Act, 1947.

15. Hon'ble High Court of Himachal Pradesh in **Ramesh Kumar vs. Food Corporation of India, 2013 LLR 709** has held in para no.11 and 14 as follows:—

"In view of the above, the legal position on the issue of transfer can be summarized as under:—

(1) Transfer is a condition of service.

(2) It does not adversely affect the status or emoluments or seniority of the employee.

(3) The employee has no vested right to get a posting at a particular place or can choose to serve at a particular place for a particular tenure.

4) It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.

(5) Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.

(6) There is a very little scope of judicial review by the Court/Tribunal against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or mala fides is established.

(7) In case of mala fides, the employee has to make specific averments and should prove the same by adducing implacable evidence.

(8) The person against whom allegation of mala fide is alleged is to be impleaded as a party by name.

(9) Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Departmental personnel.

(10) The Court does not have a power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children as consideration of this issues fall within the exclusive domain of the employer.

(11) If the transfer order is made in mid-academic session of the children of the employee, the Court / Tribunal cannot interfere. It is for the employer to consider such a personal grievance".

"14. The Hon'ble Supreme Court in State of Haryana & Ors., versus Kashmir Singh & Anr., (2010) 13 SCC 306, has observed that the Court should not interfere with purely administrative matters except where absolutely it is necessary on account of violation of any fundamental or other legal right. The Hon'ble Supreme Court has also reiterated the law in Registrar General, High Court of Judicature of Madras versus R.Perachi & Anr., (2011) 12 SCC 137, by observing that transfer is an incident of service and if transfer is made on administrative grounds and judicial review is limited and the High Court has not to interfere with the transfer lightly".

16. The Hon'ble High Court of H.P. in **State of H.P. & Ors. vs. Presiding Judge & Anr., 2006 LLR 1020** has held in paras 18 and 23 as follows:—

"18. To attract Section 25-F of the Act, termination of the services of an employee must be by some act of the employer. If there is no termination of the services by the employer out of his own volition but the disengagement or discharge of the employee is caused on account of some act or event over which the employer has no control, then in my view, it cannot be said to be retrenchment of services of a workman within the meaning of Section 2(oo) of the Act. The essence of retrenchment is the termination of workman's services by some act on the part of the employer. In the instant case, the employer is not expected to wait for two years for workman to return who had also sent notice at her admittedly known address.

23. In the present case, as noticed above, the workman remained absent without any information to the employer or communicating any reasons for her absence and suddenly wanted to join her duties after two years with a certificate that she was advised to live with her husband during this period. In my view, voluntary absence which amounts to voluntary abandonment and voluntary retirement from the work would not amount to retrenchment within the meaning, of Section 2(oo) of the Act and therefore, Section 25-F of the Act is not attracted in the facts and circumstances of this case".

17. Hon'ble High Court of Delhi in **Shri Gian Chand versus Secretary (Labour) Delhi Administration** in **C.W. No. 2339/93 & C.M. 3767/93** has held that *failure of an employee to comply with the transfer order does not amount* to termination but abandonment. The intention has to be inferred from the act and conduct of the party and as a question of fact.

18. In the light of above precedent it is important to observe that during the cross-examination of the petitioner he has revealed that he was not interested to get promotion or join a new place of posting. He despite notice to transfer order did not convey his intention not to join at new place of posting nor his intention to forgo the promotion. He alleges that he was not allowed to enter into the company after 3.8.2019 but also stated that he worked in the company till 13.8.2019. According to him his presence was marked in the company till 6.8.2019. He has stated that he replied to notices issued by the company but no such document could be proved by way of evidence before the court. This conduct of the petitioner points the fact of complete abandonment of his job after 3.8.2019. The industrial dispute was raised on 10.8.2019 but no reason for joining of new place of posting was conveyed. He has not raised any objection with the respondents alleging change of service condition. The Hon'ble Supreme Court in **The Tamil Nadu Agricultural University & Anr. vs. R. AGILA ETC.** in **Special Leave of Appeal (Civil) Nos. 13070-13075 of 2022** has held in paras No. 3, 4 and 7 as follows:—

"3. It is established as a part of service law jurisprudence that transfer is an exigency of service. As such, when a person becomes an employee of the Government, the

incidence of transfer becomes inherent in the terms of service unless it is specially barred under certain provisions governing conditions of service.

4. Under such terms and conditions of service, an employee has no right to remain absent or refuse to join the new place of transfer once relieved from their current place of posting. The employee is entitled to avail all available remedies for redressal of grievances, but it does not entitle them to not comply with the transfer orders. The employee is well within his rights to join the transferred place of posting and still continue to avail the remedies available under the law for redressal of his grievances against the transfer.

7. We also find it relevant to quote here a judgment of this Court on the same subject in Tushar D. Bhatt v. State of Gujarat, (2009) 11 SCC 678.

"16. The legal position has been crystallised in a number of judgments that transfer is an incidence of service and transfer are made according to administrative exigencies.

17. In the instant case, in the entire tenure of more than 18 years, the appellant was only transferred twice. The appellant's transfer order cannot be termed as malafide. The appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorisedly absent from official duties from 11.10.1999 to 27.4.2000 *i.e.* more than six months. In the interest of discipline of any institution or organization such an approach and attitude of the employees cannot be countenanced.

18. In Gujarat Electricity Board v. Atmaram Sungomal Poshani [(1989) 2 SCC 602: 1989 SCC (L&S) 393: (1989) 10 ATC 396: AIR 1989 SC 1433] this Court had an occasion to examine the case of almost similar nature. This Court observed as under:

"4. ....Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the public servant concerned must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place of the other".....

19. Hon'ble Supreme Court in **U.P. Singh vs. Punjab National Bank, 2024 LLR 119** has held in para 10 as follows:—

"10. A person aggrieved by the order of transfer cannot sit at home and decide on his own that the order is illegal or erroneous and he will not comply with the same. If the workman had any grievance, he could have availed of his remedy available against the same; otherwise, he was duty-bound to comply with the same. Failure to avail of any remedy also would mean that he had accepted the order and was duty-bound to comply with the same. At a later stage, he could not take a plea that the order being erroneous, no consequence would follow for its non-compliance".

20. The Hon'ble High Court of H.P. in **Smt. Rani Sharma and Others vs. State of Himachal Pradesh and Another, 2019 LLR 856** has held in paras 32 to 35 as follows:—

> "32. Coming back to the facts of this case. As already discussed above, it is not in dispute that the case of the workmen was not taken up with the appropriate Government either by appreciable number of employees or by the Management. In other words, the cause of the workmen was not espoused either by number of workmen or by the Management. The cause was independently espoused by both the workmen in their individual capacity before the appropriate Government. Such dispute, which was individually raised by the workmen feeling aggrieved by the issuance of the transfer order, by no stretch of imagination, could have been referred to Industrial Tribunal-cum-Labour Court by the appropriate Government under Section 10 of the Industrial Disputes Act. That being so, adjudication upon the said Reference by the learned Labour Court, which stands assailed by way of the writ petition filed by the employer, is per se void ab initio and not sustainable in the eyes of law.
>
> 33. In order to give an opportunity to the learned Counsel for the workman to demonstrate that an Industrial Dispute qua transfer orders could have been individually espoused by them under the Industrial Disputes Act, sufficient time was given, but he could not substantiate in law that such a dispute could have been individually raised by them and subsequently referred by the appropriate government by way of a Reference for adjudication to the Industrial Tribunal-cum-Labour Court.
>
> 34. Thus, as it is apparent that no individual Industrial Dispute could have been raised by the workmen against the transfer order, the Reference made by the appropriate Government on the demand notice of the workmen was bad in law and not in consonance with the provisions of Section 2(k) of the Industrial Disputes Act. As a natural corollary, the adjudication of the said Reference by the learned Tribunal by way of award dated 04.08.2010 in Reference No. 36 of 2006 is also thus void ab initio and not sustainable in law.
>
> 35. Accordingly in view of discussion held herein-above, both the Reference made by the appropriate Government as well as the award dated 04.08.2010 passed in Reference No. 36 of 2006, titled as Baldev Sharma and another *vs.* The Area Manager, Bata India, by learned Tribunal are quashed and set aside. Consequently, the writ petition filed by the Company, *i.e.* CWP No. 4993 of 2011, is allowed whereas the writ petition filed by the workmen, *i.e.* CWP No. 8419 of 2010, is dismissed. No orders as to costs".

21. Learned Counsel for the petitioner has vehemently argued that even if the petitioner had failed to report at new place of posting respondent did not follow due process before dispensing with the services of the petitioner hence termination of the petitioner was void and illegal.

22. The peculiar circumstances of the present case show that in order to constitute termination the intention of petitioner to continue his duties was relevant. Petitioner however did not bother to join his duty at new place of posting after which he was at liberty to raise appropriate dispute if any qua victimization by way of transfer or otherwise. He could not produce evidence qua his response if any to the various notices including relieving notice dated 13.8.2019. The pleadings of the respondent read in para no.6 page 6 of the reply as follows:—

> "The management has never terminated the services of applicant rather given him promotion vide promotion letter dated 03.8.2019 and if the applicant is ready to accept his promotion and joining at new place of posting at Reckongpeo the management is also ready

to take him back in service with continuity of service but without back wages on the principle of "**No Work No Pay".**

23. In view of this averment the relevant notice Ext. RW1/G would not amount to termination. Petitioner has conceded unequivocally that he does not intent to join new place of posting or to avail promotion thus the intention of petitioner qua non compliance of principle of natural justice and opportunity of being heard is no more relevant in the present case. The conduct of the petitioner amounts to wilful abandonment and deliberate non compliance of transfer order from 3.8.2019 to 13.8.2019. Pertinent to observe that even being aware of his transfer the petitioner did not join his duty or raise any objection with the respondent in this regard.

24. As laid down by the Hon'ble High Court of H.P. in **Rani Sharma's case (supra)** the crux of the dispute between petitioner and respondent was transfer order and not the dismissal, discharge and retrenchment. As the petitioner has abandoned the job thus he is not entitled to any relief under Section 25, Clause F of the Industrial Disputes Act.

25. Learned counsel for the petitioner has also argued that by way transfer and relieving order the respondent has not complied with the provisions of Section 33 Clause 1 of the Industrial Disputes Act. In view of the ongoing dispute between the parties under Section 17 Clause 1 of the Governing Act with the appropriate authority. Pertinent to mention here that there is no evidence to establish that transfer of the petitioner had caused change in his service condition or prejudiced him in any manner. On the other hand he failed to join at the relevant place of posting with no plausible excuse. In the pleadings of the present claim also there is no mention of the prejudice which has been caused to the petitioner by way of transfer or any change in service condition which would have affected him adversely. No evidence has been led in this regard. Thus the petitioner could not have availed benefit under Section 33 Clause 1 of the Industrial Disputes Act. In view of the above discussions and the evidence which has been led before this court there does not appear to be any expressed retrenchment or intentional termination of services of the petitioner by the respondent hence issues no.1, 3 and 4 are decided in the favour of the respondent.

Issue No. 2

26. It appears from the statement of witness that there was no formal termination of the petitioner by the respondent. Respondent in reply to the claim of the petitioner has shown their willingness to allow the petitioner to join new place of posting. The petitioner has averred in the statement that he has unwillingly to join new place of posting. The question of back wages cannot be considered as petitioner has not joined his new place of posting as per transfer order and the principle of no work no pay would apply as the petitioner had not led any cogent evidence with regard to the reasons for not joining at new place of posting or justify his absence. In these circumstances no benefits relief can be granted in the favour of the petitioner. Hence this issue is decided accordingly.

RELIEF

27. In view of my discussion on the issues nos. 1 to 4 above, the present claim made by the petitioner against the respondent is not maintainable and the reference is decided accordingly. Parties are left to bear their costs.

28. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of April, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 33/2021
Date of Institution : 05.3.2021
Date of Decision : 28.4.2025

Shri Vinod Kumar s/o Shri Puran Chand, r/o Village & P.O. Bhugnara, Tehsil Nurpur, District Kangra, H.P. ..*Petitioner.*

Versus

1. M/s Divya Himachal Prakashan Pvt. Ltd., Head Office at Kangra-Pathankot Marg, Mataur, Tehsil & District Kangra, H.P. through its Chairman-cum Managing Director.

2. M/s Samarpan Printers, Kangra-Pathankot Marg, Purana Mataur, Tehsil & District Kangra, H.P. through its partners/proprietors. ..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.D. Sharma, Ld. Adv.
For the Respondent : Sh. N.L. Kaundal, Ld. AR
: Sh. Vijay Kaundal, Ld. Adv.

AWARD

This is a claim petition under Section 2-A (2) of the Industrial Disputes Act, 1947 filed directly before this court after completion of mandatory period of 45 days of filing of dispute before the Conciliation Officer.

2. The brief facts as stated in the claim petition are that the applicant/workman was employed as Page Maker/Designer-cum-DTP Operator on 16.7.1997 by the management M/s. Divya Himachal Prakashan Pvt. Ltd. without appointment letter and the applicant was deputed to work in head office of respondent/management situated in Editorial and Admin Office at SCO 60-61, 1st Floor, Swastik Vihar, Mansa Devi Road Panchkula, Haryana. On 3rd November, 1997 the petitioner was transferred to Head Office of respondent management situated at Kangra-Pathankot Marg, Old Mataur, Kangra, H.P. The salary of applicant/workman was initially paid by respondent No.1 on cash voucher and from year 2008 his salary was paid in his salary account No.65028929379 in the branch of State Bank of Patiala (now merged into SBI) branch at Kangra city. After the appointment of applicant the provident fund was deducted by the respondent from 1998-1999. It is asserted that the respondent management is a body corporate registered under the

Companies Act, 1956 (amended as Act, 2013) having its registered office at Kangra-Pathankot Road, Old Mataur, Kangra, H.P. and primary business of company is to publish and print a newspaper in the name and style of 'Divya Himachal'. The printing centre of the respondent management is also situated in the same establishment at Kangra-Pathankot Marg, Old Mataur, Kangra, HP and registered as partnership firm in the name and style of M/s Samarpan Printers and Shri Bhanu Dhamija is the Chairman-cum-Managing Director and Shri Anil Soni is the Director-cum-Editor-cum-Printer/publisher of the company and its newspaper 'Divya Himachal' and both are the proprietors/partners of the Printing Press M/s Samarpan Printers as there is functional integrality and common control of the managements of both establishment of respondent/management. The service conditions and wages of applicant/workman were governed by The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, hereinafter referred to as the 'Governing Act' enacted by the Parliament. The applicant/workman falls under Section 2(c) and 2 (dd) of the Governing Act and defined a non-journalist newspaper employee of the concerned newspaper establishment as well as applicant/workman was also workman in terms of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is asserted that the respondent/management and printing press i.e. M/s Samarpan Printers are covered under the Governing Act and falls within the definition of Single Newspaper Establishment in terms of Section 2(d) read with Schedule of the Act, whereas Daily Divya Himachal is a Hindi daily newspaper of the respondent/management falls under Section 2b of the Governing Act. Principal business of respondent no.2 is to print the news paper of respondent no.1. In terms of Section 14 of Governing Act the Industrial Employment (Standing Orders) Act, 1946 applicable to the respondent/management but the respondent/ management not certified its standing orders in terms of Section 14 of Governing Act and in terms of the Industrial Disputes Act, 1947 the respondent/management falls within the provisions of Chapter VB and also in terms Section 2(m) of Factories Act, 1948 the respondent management falls within the definition of the factory. Both the respondents are interdependent on each other. The Government of India, Ministry of Labour vide notification dated 24.5.2007 constituted the Wage Boards in terms of Section 9 and 13B of the Governing Act to review and determine the wages and service conditions of Newspaper Employees including that of the applicant/workman. Thereafter the Wage Board submitted its recommendations to the Government on 31st December, 2010 and the Central Government accepted the same vide notification dated 11.11.2011 made the award enforceable subject to the decision of Hon'ble Supreme Court in writ petitions filed by the owners of newspapers against the Wage Board and its recommendations. Wage Board submitted its recommendations on 31st December, 2010 vide notification dated 11.11.2011 the award was made enforceable. The Hon'ble Supreme Court vide its judgment in ABP Pvt. Ltd. & Anr. Vs. Union of India & Ors. AIR 2014 SC 1228 dismissed the objections and petition against Majithia Wage Board and its recommendations and the Newspaper Establishment were directed to implement the same *w.e.f.* 11.11.2011. It was also directed that arrears be paid upto March, 2014. It is alleged that respondent management did not implement recommendations of Majithia Wage Board and did not revise wage and interim relief of the employees who were continuously demanding the revised wages and service conditions. In the contempt petition (Civil) no. 411 of 2014 reported in Avishek Raja & Ors. vs. Sanjay Gupta, AIR 2017 SC 2955, the Hon'ble Supreme Court further passed directions and clarifications on some legal issues in this judgment on 19.6.2017. In accordance with this judgment the newspaper establishment was under obligation to pay the dues to the confirm employees along-with contractual employees in terms and directions passed in previous judgment dated 7.2.2014. It is again reiterated by claimant that he was not being paid his dues and wages in accordance with the Wage Board notification and the management was disobeying the orders of Hon'ble Supreme Court. It is prayed that the act of the management terminating the services of petitioner be held to be illegal unjust and void. Petitioner may be reinstated in service from the day from he was ousted from service alongwith full back wages, seniority and other consequential/past service benefits. It is also prayed that petitioner be held entitled for compensation on account of act of victimization by the respondents. It is alleged that the claimant/workman was not paid his dues

and wages accrued under the Wage Board Notification which was ultimately merged with the directions of judgments dated 7.2.2014 and 19.6.2017 passed by the Hon'ble Supreme Court. The employees including the claimant/petitioner had filed a contempt before Hon'ble Supreme Court wherein the Hon'ble Supreme Court directed and clarifications on some legal issues in its judgment on 19.6.2017. The claimant/workman had demanded the dues since judgment dated 7.2.2014 however the respondent had made excuses one after the other and now refused to pay the same to the claimant and he was pressurized for forced resignation. The management started victimization all employees inclusive of claimant/workman who demanded their legitimate dues. The victimization was resorted to by forced resignation of large number of employees but the claimant/workman had denied giving forced resignation. It is asserted that the claimant/workman along with other aggrieved employees had filed a complaint with regard to forced resignation of employees by the management before Additional Chief Secretary (Lab. & Emp.) of H.P. Government. The Labour Commissioner of H.P. and Labour Inspector, Dharamshala vide letters dated 10.7.2019, 14.7.2014 and 31.7.2019 respectively. Thereafter Principal Secretary (Lab. & Emp.) of H.P. Govt. Had issued the directions to the Labour Commissioner of H.P. for necessary action on it vide letter dated 29.7.2019 and 19.8.2019 respectively. Labour Commissioner through Deputy Labour Commissioner had issued directions to the Labour Office Dharamshala vide letter dated 1.8.2019 and 23.8.2019. As per the directions issued by the office of Labour Commissioner dated 1.8.2019 the claimant/workman had filed claim of his due arrears of difference of old and revised wages along-with arrears of interim relief and other allowances before the designated authority under Section 17(1) of the Governing Act. Specifically prohibited by the express provision of Section 16-A of the Working Journalist and Other News Paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 for victimization of employees for demanding their dues from the management but the management continued to take vindicate action against the employees including the claimant/workman in the present matter. While disregarding the statutory provision by the respondent by way of threatened to claimant/workman to withdraw the application filed by him under Section 17(1) of the Governing Act before the designated authority-cum-Labour Officer Dharamshala on 3.8.2019 as well as pressurized the claimant along-with other colleagues to extract the signatures on forced resignation. When the claimant had denied following the above illegal, unjust, arbitrary and unconstitutional directions of the officials of the management, the services of the claimant were terminated on 3.8.2019 by verbal/oral order *w.e.f.* 4.8.2019 along-with four colleagues namely Rajhuvinder Singh, Yash Paul Sharma, Rahul Choudhary and Ashu Kumar. It is asserted that the claimant had tried to join the duty but he was not allowed to join his duty as well as he was not allowed to enter the gate of the office at Purana Mataur (Kangra). Thereafter claimant along-with other colleagues have filed their claim under Section 17(1) of the Governing Act before the designated authority-cum-Labour Offier Zone Kangra at Dharamshala. It is asserted that after the victimization by way of pressurizing to extract the forced resignation and restrain to join the duty by the respondent/management the claimant along-with other colleagues have filed complaint before SHO, Police Station Kangra. It is asserted that on 5.8.2019 the claimant along-with four workmen had also filed applications under Section 16-A of the Governing Act against the oral/verbal termination of their services *w.e.f.* 4.8.2019. It is asserted that after knowing about the complaints of the verbal/oral termination and victimization filed by the applicant and other four colleagues, the respondent/management had planned a new conspiracy by way of issuing their malafide and back dated transfer-cum-new responsibility (promotion) orders however these malafide transfer orders were received by the claimant and other four colleagues after expiry of last date of joining at new station and these orders were clearly in violation of law of land as in absence of the appointment letter, agreement of service conditions and certified standing order the job of the applicant was not transferrable. Further the claimant had received this letter on 10.8.2019 issued by HR department with signatures of Deputy Manager, HR Sh. Anand Sharma. In accordance with postal record the transfer letter was sent by register post on 5.8.2019 but deliberately the back date was mentioned on it as 3.8.2019. It is alleged that the before issuing the transfer letter the respondent/management had already terminated the services of the workman orally/verbally on

4.8.2019 and restrained the claimant to join his duty. On 10.8.2019 claimant/workman had sent a demand notice by speed post to the Chairman-cum-Managing Director of the respondent company regarding illegal, unjust and malafide transfer orders and the same was deliberately not received by the addressee and returned back on 22.8.2019. This demand notice was espoused by the co-workers and Newspaper Employees Union of India. It is asserted that the claimant had received a back dated letter of termination send through speed post and same was not signed by the appointing authority of respondent/management and respondent/management had given false, arbitrary, fabricated, unjust and voidable reasons to terminate the services of the claimant. It is asserted that the order of termination dated 13.8.2019 was clearly in violation of the principles of natural justice as there was no opportunity or so cause notice given to listen the claimant/workman. The action of the management by issuing illegal termination and malafide transfer orders was contrary to the provisions of the Industrial Employment (Standing Orders) Act, 1946 is applicable to the services of workman in terms of Section 14 of the Governing Act read with Industrial Employment (Standing Order) Himachal Pradesh Rules-1973 and Amendment Rules 1991. It is further asserted that the termination order dated 13.8.2019 was illegal and same was in violation of the provisions of Section 33 of the Industrial Disputes Act. The respondent/management had not seeking the approval of Labour Officer Dharamshala in terms of Section 33 of Industrial Disputes Act before terminating the services of the claimant as the proceedings under Section 17(1) were pending before the said authority. On 22.8.2019 the claimant had filed application/demand notice under Section 2-A of the Industrial Disputes Act before the Conciliation-cum-Labour Officer, Dharamshala and the said authority had issued notice to the respondent vide letter dated 20.9.2019 and the conciliation proceedings were initiated on 30.9.2019. The claimant/workman submitted that the illegal, arbitrary, unfair, malafide, voidable and unjust act of management by issuing firstly verbal/oral order *w.e.f.* 4.8.2019 and then written order of the termination on 13.8.2019 without any prior notice is liable to be quashed and set aside. The claimant is unemployed due to illegal and unjust act of the respondent/management and still facing financial hardships for livelihood. It is prayed that the act of the management terminating the services of petitioner be held to be illegal unjust and void. Petitioner may be reinstated in service from the day from he was ousted from service along-with full back wages as per recommendations of Majithia Wage Board, seniority and other consequential/past service benefits along with litigation costs.

3. In reply filed on behalf of the respondent no.1 whereby preliminary objections qua maintainability, abuse of process of law and relationship of master and servant between respondent no.1 and claimant have been raised. On merits, all the averments made in the claim has been denied. It is asserted that there was no relationship of employee and employer ever existed between the claimant and replying respondent and question of termination of the services of the claimant did not arise at all. It is asserted that the respondent no.1 never paid any wages to the claimant. It is further submitted that Divya Himachal Prakashan Pvt. Ltd. and Samarpan Printers are two different establishment having different registration number and EPF Code number, PAN Nuber, GST No. etc. All other parawise averments made in the claim were denied and it is prayed that the claim petition deserves to be dismissed.

4. Reply filed on behalf of respondent No. 2 wherein preliminary objections qua maintainability, claimant not falling under definition of 'workman' under the Industrial Disputes Act, jurisdiction, locus standi, resjudicata and wilful abandonment of service by the petitioner have been raised. On merits, it is denied that the respondent had violated the provisions of Sections 33, 25-F and 25-N of the Industrial Disputes Act as such these Sections were not applicable in the present case. It is asserted that the services of the claimant had been engage by the respondent No. 2 vide appointment letter dated 26.12.1997 and he joined *w.e.f.* 1.1.1998 and it was beyond imagination that how the claimant claims his employment with respondent no.1. It is further submitted that the present application under Section 2-A of the Industrial Disputes Act, 1947, the claimant cannot raised any issue regarding employment provident fund. It is denied that there was

functional integrality and common control in the managements of M/s Divya Himachal Prakashan Pvt. Ltd. and M/s Samarpan Printers. It is asserted that the same person can be an owner of two different establishments but does not mean that there is a functional integrality and common control in the managements of both establishments. It is further asserted that Divya Himachal Prakashan Pvt. Ltd. and Samarpan Printers are two different establishment having different registration number, EPF Code number, PAN number, GST number etc. It is asserted that the applicant is not fall under the definition of workman within the meaning of Section 2(S) of the Industrial Disputes Act, 1947 as such the applicant was drawing more than Rs.10000/- per month at the time of this promotions. It is asserted that the contents of paras with regard to Majithia Wage Board compliance there was no relevancy in the present dispute which had been filed to seek reinstatement in service moreover regarding Majithia Wage Board claim the claimant had filed separate claim petition before this Court. It is denied that the claimant was terminated but the true fact that the services of claimant had been promoted and transferred to new place of posting and promotion letter had been mailed in his mail account and also sent his home address through registered post but the claimant had not joined his new place of posting and therefore he abandoned the job.

It is asserted that the police had not conducted any investigation in this regard against the respondent management till date. It is further asserted that fake and false stories have created by the authorized representative of the applicant with an intention to create pressure upon the respondent management to pay Majithia Wage Board. It is asserted that the respondent management had not made any pressure upon the applicant to give his resignation from service. The applicant had written totally false story in the present petition whereas the true fact is that the applicant voluntary given his option under paragraph 2(J) of the Majithia Wage Board recommendations to retain his the then existing wages/emoluments. The management had also not terminated the services of applicant rather the management had given promotion to the applicant as circulation representative in Circulation Department *w.e.f.* 3.8.2019 in new place of posting at Bureau Office Shimla and also given him increment of Rs.1435/- per month plus Rs.1500/- per month as station allowance and asked him to join new station on or before 7.8.2019. The promotion letter was also emailed to the claimant in his email Id i.e. vkbhardwaj@gmail.com as filled/submitted by him at the time of his enrolment/joining but the applicant had not received the promotion letter and left the office and also not given any response to the mail. Thereafter the promotion letter was sent to the applicant vide registered letter dated 5.8.2019 under receipt no.EE7908238501N in his home address but again no response from the applicant. Thereafter the management had given him one more chance to join at Chamba office on or before 12.8.2019 and mail in this regard was sent in his email Id which was wilful negligence, disobedience and sheer indiscipline, therefore the applicant had relieved from service with immediate effect *w.e.f.* 13.8.2019 and information in this regard was sent in his email id as well as hard copy of the same was sent to him through registered post on 16.8.2019 vide receipt No.EE7928455211N. It is asserted that the management had never terminated the services of applicant, rather given him promotion vide promotion letter dated 3.8.2019 and if the applicant was ready to accept his promotion and joining at new place of posting. It is asserted that transfer and termination order of claimant were withdrawn by the respondent and the claimant was directed to rejoin his old place of posting on or before 5.12.2019 and letter was sent to claimant vide registered receipt no.RE7537501901N but the claimant had not given any reply to the letter. It is asserted that the respondent has not mentioned back date in promotion letter as 3.8.2019 but the true fact is that the said promotion letter was drafted in the eve of 3.8.2019 and could not be sent to the applicant. On 4.8.2019 it was Sunday and the promotion letter was posted to applicant on 5.8.2019. It is further asserted that due to holiday of second Saturday on 14.8.2019 and Sunday on 15.8.2019 the reliving letter was sent through post on 16.8.2019. It is further asserted that the information regarding reliving from services was sent to the applicant through mail dated 13.8.2019 and the same was signed by the then Assistant Manager (HR) Mr. Balawan Singh Rana. It is asserted that the applicant had not accepted the promotion order and not join at Chamba office without any communication in writing and this act of the applicant was treated as wilful

negligence, disobedience and sheer indiscipline, therefore the applicant was relieved from service with immediate effect *w.e.f.* 13.8.2019 and information in this regard was sent in his email id as well as hard copy of the same was sent through registered post dated 16.8.2019 vide receipt no.EE7928455211N. It is further submitted that the applicant possess ample cultivated land and earning his livelihood as an agriculturist. Other averments and allegations made in the claim petition were denied and it is prayed that the claim deserves to be dismissed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP

2. If issue No.1 is proved in affirmative to what relief the petitioner is entitled to? ..OPP

3. Whether the petitioner is not a workman for the purpose of this reference. If yes its effect? ..OPR

4. Whether there is no relationship of master and servant between the claimant and the respondent in the manner as alleged. If yes its effect? ..OPR

Relief.

6. In order to prove his case the petitioner has produced on record his affidavit PW-1 wherein he reiterated the fact stated in the petition. He has also produced on record list of employees Ext. P-1, statement of account Ext. P-2, copy of I.D. Cards, Ext. P-3 to Ex. P-6, copy of report Ext. P-7, letter dated 3.8.2019 Ext. P-8, letter dated 3.8.2019 Ext. P-9, demand notice Ext. P-10, letter dated 13.8.2019 Ext. P-11, and letter of withdrawal of promotion/transfer order Ext. P-12.

7. Respondent No.1 has examined Shri Hitesh Kotia s/o Shri R.S. Kotia by way of affidavit Ext. RW1/A wherein he reiterated the facts mentioned in the reply. He also produced on record copy of rojnamcha Ext. RW1/B and copy of certificate Ext. RW1/C. Respondent No.2 has examined Shri Balwan Singh Rana s/o Shri Kushal Singh by way of affidavit Ext. RW2/A wherein he reiterated the facts mentioned in the reply. He has also produced on record copy of attendance record Ext. RW2/B, copy of email dated 8.8.2019 & 13.8.2019 Ext. RW2/C, copy of letter sent through registered post dated 16.8.2019 Ext. RW2/D, copy of letter dated 3.8.2019 Ext. RW2/E, copy of registration & factory license Ext. RW2/F, copy of GST registration certificate Ext. RW2/G, copy fo PAN Number Ext. RW2/H, copy of EPF establishment code of Samrpan Printers Ext. RW2/J, affidavit under Section 65B of Indian Evidence Act Ext. RW1/K and list of employees Ext. RW1/L.

8. I have heard the learned Counsel for the petitioner as well as learned AR/Counsel for the respondents no.1 and 2 at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	No
Issue No.2	:	No
Issue No.3	:	Yes
Issue No.4	:	Yes
Relief	:	Claim petition is dismissed allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. The petitioner has stated that he was employed by M/s Divya Himachal Prakashan and M/s Samarpan Printer as respondents no.1 and 2 respectively. He alleges in his statement that he had worked as Page Maker/Designer-*cum*-DTP Operator since 16.7.1997 and received salary by way of cash vouchers. To prove this fact he has produced his bank statement Ext. P-2 and identity cards issued by respondents Ext. P2 to Ext. P6. These document reflect his employment at M/s Divya Himachal Prakashan till 2018. This also falsified statement of Hitesh Kotia that petitioner was never an employee of respondent no.1 nor they paid wages to him. RW2 Shri Balwan Singh Rana, Associate Manager HR, M/s Samarpan Printers has alleged that petitioner was the employee of respondent no.2. This claim petition is however filed against both the respondents alleging that they are a single establishment. The schedule under Section 2(D) of Working Journalist and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 provides as follows:—

1[THE SCHEDULE [SECTION 2(D)]

1. **For the purposes of clause (d) of section 2,—**(a) two or more newspaper establishments under common control shall be deemed to be one newspaper establishment;

   (b) two or more newspaper establishments owned by an individual and his or her spouse shall be deemed to be one newspaper establishment unless it is shown that such spouse is a sole proprietor or partner or a shareholder of a corporate body on the basis of his or her own individual funds;

   (c) two or more newspaper establishments publishing newspapers bearing the same or similar title and in the same language in any place in India or bearing the same or similar title but in different languages in the same State or Union territory shall be deemed to be one newspaper establishment.

2. For the purposes of paragraph 1(a), two or more establishments shall be deemed to be under common control—

   (a) (i) where the newspaper establishments are owned by a common individual or individuals;

   (ii) where the newspaper establishments are owned by firms, if such firms have a substantial number of common partners;

   (iii) where the newspaper establishments are owned by bodies corporate, if one body corporate is a subsidiary of the other body corporate, or both are subsidiaries of a common holding company or a substantial number of their equity shares are owned by the same person or group of persons, whether incorporated or not;

   (iv) where one establishment is owned by a body corporate and the other is owned by a firm, if a substantial number of partners of the firm together hold a substantial number of equity shares of the body corporate;

(v) where one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners if a substantial number of equity shares of such bodies corporate are owned, directly or indirectly, by the same person or group or persons, whether incorporated or not, or (b) where there is functional integrality between concerned newspaper establishment.]

11. RW1 Hitesh Kotia has admitted that the owner of the Divya Himachal Prakashan is Shri Bhanu Dhamija and Shri Anil Soni is the director. RW2 Shri Balwan Singh Rana admits that the partners of the M/s Samarpan Printers is Sh. Bhanu Dhamija and Anil Soni vide Ext. RW1/G and he also admits that Samarpan Printers is doing printing work for Divya Himachal newspaper. This fact is not denied by any of the respondents in their reply also. The admission of these two witnesses depict that both establishment are owned by atleast one common individual. The printing press has a primary duty to print and to produce newspapers which are subsequently distributed. Thus there is functional integrity and common control between the respondents establishment and both respondents are governed by the Governing Act. Both the respondents can be considered as one newspaper establishment. Since 1997 to 2018 the salary of the petitioner was also directly given by respondent no.1. This fact brought forward from the documents falsify the averment made in the statement of RW1 Shri Hitesh Kotia that respondent petitioner was never an employee of respondent no.1. The sum total of evidence produced before the court clearly proves that there were an employee and employer relationship between the petitioner and respondent no.1 and respondent no.2, who shall be considered a single establishment for the purpose of Governing Act. Issue No.4 is decided in the favour of the petitioner.

Issues No.1 and 3

12. Both these issues are interlinked and interconnected and taken up together for the sake of evidence to avoid repetition of evidence.

13. Certain facts of the present claim are not disputed i.e. petitioner was employed as Page Maker/Designer-cum-DTP Operator *w.e.f.* 16.7.1997. The petitioner has asserted that he falls within the definition of workman which fact is denied by the respondent stating that the salary of the petitioner was Rs.10000/- or above. The dispute between the petitioner and respondent is however governed under the Industrial Disputes Act, 1947 as well as Working Journalist and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. The petitioner falls under the category of non journalist newspaper employee and is covered under Section 9 to 16 of the Special Act for seeking the relief under the Industrial Disputes Act.

14. Document dated 10.7.2019 is the complaint made by the petitioner and his colleagues against the respondent for non compliance of recommendations of Majithia Wage Board, alleging that the respondent were seeking forced resignation and threatening the workman with transfer on less salary and outside station. The Principal Secretary, Labour & Employment had directed the Labour Commissioner to take necessary action on the complaint made by petitioner and others who further directed the Labour Officer Dharamshala to investigate and take the legal action on the said complaint. These documents reflect that petitioner and others had made complaint to the authorities regarding non implementation of Majithia Wage Board recommendations and other oppressive measures by the respondent against petitioner and others in July, 2019.

15. On 3.8.2019 the complaint was made to the police authority that petitioner and others were being harassed and not allowed to enter the company premises by the respondent management. The contention of the respondent is however based on the denial of allegations made to the labour authorities and it is asserted that management had not terminated the services of applicant/claimant but had rather given promotion to the applicant petitioner as Senior Executive in

Digital Media Production department *w.e.f.* 3.8.2019 at a new place of posting Bureau Office Kullu with increment of Rs.1435/- per month plus Rs.1500/- per month as station allowance and asked to join on or before 7.8.2019. The registered post dated 5.8.2019 was sent to the petitioner at his home address which was not replied. Again one chance was given to the petitioner to join his service at new place of posting on or before 12.8.2019 and email was sent on his email address i.e. vkbhardwaj@gmail.com but he did not respond. Considering the abandonment of service the petitioner and by way of registered post were sent on 16.8.2019. The Transfer and termination order earlier was issued was withdrawn and respondent No. 2 directed the petitioner to join his service on or before 5.12.2019 vide registered post but no reply was received by the respondent.

16. Petitioner in his cross-examination stated that he did not join his posting at Kullu and that he did not intent to avail promotion which was orally conveyed the HR Manager. He also admits that his official email address is vkbhardwaj893@gmail.com The petitioner has denied that he received email dated 3.8.2019 but he admits he did not reply the said email and on being aware of email dated 8.8.2014 he only issued demand notice Ext. P10. Demand notice is dated 10.8.2019. He merely stated that he does not remember that he received email dated 3.8.2019 but did not deny expressly. He admits that he received letter Ext. P12 but still did not join his service. According to petitioner he was asked by Managing Director to resign however there is no oral and documentary evidence to support this contention made by the petitioner. The petitioner had sent a demand notice through speed post to the respondent company on 10.8.2019. This demand is also with regard to defective, arbitrary and malafide transfer only.

17. The present dispute is with respect to illegal termination of the petitioner by the respondent but respondents have alleged voluntary abandonment of the work and that merely relieving the petitioner consequent to transfer is not a dispute under Sections 25-F and 25-N of the Industrial Disputes Act, 1947.

18. Hon'ble High Court of Himachal Pradesh in **Ramesh Kumar vs. Food Corporation of India, 2013 LLR 709** has held in para no.11 and 14 as follows:—

> "In view of the above, the legal position on the issue of transfer can be summarized as under:—
>
> (1) Transfer is a condition of service.
>
> (2) It does not adversely affect the status or emoluments or seniority of the employee.
>
> (3) The employee has no vested right to get a posting at a particular place or can choose to serve at a particular place for a particular tenure.
>
> (4) It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.
>
> (5) Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.
>
> (6) There is a very little scope of judicial review by the Court / Tribunal against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or mala fides is established.
>
> (7) In case of mala fides, the employee has to make specific averments and should prove the same by adducing implacable evidence.

(8) The person against whom allegation of mala fide is alleged is to be impleaded as a party by name.

(9) Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Departmental personnel.

(10) The Court does not have a power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children as consideration of this issues fall within the exclusive domain of the employer.

(11) If the transfer order is made in mid-academic session of the children of the employee, the Court / Tribunal cannot interfere. It is for the employer to consider such a personal grievance".

"14. The Hon'ble Supreme Court in State of Haryana & Ors., versus Kashmir Singh & Anr., (2010) 13 SCC 306, has observed that the Court should not interfere with purely administrative matters except where absolutely it is necessary on account of violation of any fundamental or other legal right. The Hon'ble Supreme Court has also reiterated the law in Registrar General, High Court of Judicature of Madras versus R.Perachi & Anr., (2011) 12 SCC 137, by observing that transfer is an incident of service and if transfer is made on administrative grounds and judicial review is limited and the High Court has not to interfere with the transfer lightly".

19. The Hon'ble High Court of H.P. in **State of H.P. & Ors. vs. Presiding Judge & Anr., 2006 LLR 1020** has held in paras 18 and 23 as follows:—

"18. To attract Section 25-F of the Act, termination of the services of an employee must be by some act of the employer. If there is no termination of the services by the employer out of his own volition but the disengagement or discharge of the employee is caused on account of some act or event over which the employer has no control, then in my view, it cannot be said to be retrenchment of services of a workman within the meaning of Section 2(oo) of the Act. The essence of retrenchment is the termination of workman's services by some act on the part of the employer. In the instant case, the employer is not expected to wait for two years for workman to return who had also sent notice at her admittedly known address.

23. In the present case, as noticed above, the workman remained absent without any information to the employer or communicating any reasons for her absence and suddenly wanted to join her duties after two years with a certificate that she was advised to live with her husband during this period. In my view, voluntary absence which amounts to voluntary abandonment and voluntary retirement from the work would not amount to retrenchment within the meaning, of Section 2(oo) of the Act and therefore, Section 25-F of the Act is not attracted in the facts and circumstances of this case".

20. Hon'ble High Court of Delhi in **Shri Gian Chand versus Secretary (Labour) Delhi Administration** in **C.W. No. 2339/93 & C.M. 3767/93** has held that *failure of an employee to comply with the transfer order does not amount* to termination but abandonment. The intention has to be inferred from the act and conduct of the party and as a question of fact.

21. In the light of above precedent it is important to observe that during the cross-examination of the petitioner he had revealed that he intentionally did not join new place of posting and did not communicate his willingness and forgo promotion in writing. It is also in the cross-examination of petitioner that despite knowledge of notice issued by respondents, he did not respond to any of the communication in writing. It cannot be presumed that he was not aware of the notice and email issued by the respondents as he had admittedly preferred a demand notice and raised the industrial dispute. This conduct of the petitioner points towards the fact of complete abandonment of his job after 3.8.2019. The industrial dispute was raised on 10.8.2019 but no reason for joining of new place of posting was conveyed. He has not raised any objection with the respondents alleging change of service condition. The Hon'ble Supreme Court in **The Tamil Nadu Agricultural University & Anr. *vs.* R. AGILA ETC.** in **Special Leave of Appeal (Civil) Nos. 13070-13075 of 2022** has held in paras No. 3, 4 and 7 as follows:—

> "3. It is established as a part of service law jurisprudence that transfer is an exigency of service. As such, when a person becomes an employee of the Government, the incidence of transfer becomes inherent in the terms of service unless it is specially barred under certain provisions governing conditions of service.
>
> 4. Under such terms and conditions of service, an employee has no right to remain absent or refuse to join the new place of transfer once relieved from their current place of posting. The employee is entitled to avail all available remedies for redressal of grievances, but it does not entitle them to not comply with the transfer orders. The employee is well within his rights to join the transferred place of posting and still continue to avail the remedies available under the law for redressal of his grievances against the transfer.
>
> 7. We also find it relevant to quote here a judgment of this Court on the same subject in Tushar D. Bhatt v. State of Gujarat, (2009) 11 SCC 678.
>
> > "16. The legal position has been crystallised in a number of judgments that transfer is an incidence of service and transfer are made according to administrative exigencies.
> >
> > 17. In the instant case, in the entire tenure of more than 18 years, the appellant was only transferred twice. The appellant's transfer order cannot be termed as malafide. The appellant was not justified in defying the transfer order and to level allegations against his superiors and remaining unauthorisedly absent from official duties from 11-10-1999 to 27.4.2000 *i.e.* more than six months. In the interest of discipline of any institution or organization such an approach and attitude of the employees cannot be countenanced.
> >
> > 18. In Gujarat Electricity Board v. Atmaram Sungomal Poshani [(1989) 2 SCC 602: 1989 SCC (L&S) 393: (1989) 10 ATC 396: AIR 1989 SC 1433] this Court had an occasion to examine the case of almost similar nature. This Court observed as under:
> >
> > > "4. ....Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the public servant concerned must carry out the

order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place of the other".....

22. Hon'ble Supreme Court in **U.P. Singh *vs.* Punjab National Bank, 2024 LLR 119** has held in para 10 as follows:—

"10. A person aggrieved by the order of transfer cannot sit at home and decide on his own that the order is illegal or erroneous and he will not comply with the same. If the workman had any grievance, he could have availed of his remedy available against the same; otherwise, he was duty-bound to comply with the same. Failure to avail of any remedy also would mean that he had accepted the order and was duty-bound to comply with the same. At a later stage, he could not take a plea that the order being erroneous, no consequence would follow for its non-compliance".

23. The Hon'ble High Court of H.P. in **Smt. Rani Sharma and Others vs. State of Himachal Pradesh and Another, 2019 LLR 856** has held in paras 32 to 35 as follows:—

"32. Coming back to the facts of this case. As already discussed above, it is not in dispute that the case of the workmen was not taken up with the appropriate Government either by appreciable number of employees or by the Management. In other words, the cause of the workmen was not espoused either by number of workmen or by the Management. The cause was independently espoused by both the workmen in their individual capacity before the appropriate Government. Such dispute, which was individually raised by the workmen feeling aggrieved by the issuance of the transfer order, by no stretch of imagination, could have been referred to Industrial Tribunal-*cum*-Labour Court by the appropriate Government under Section 10 of the Industrial Disputes Act. That being so, adjudication upon the said Reference by the learned Labour Court, which stands assailed by way of the writ petition filed by the employer, is per se void ab initio and not sustainable in the eyes of law.

33. In order to give an opportunity to the learned Counsel for the workman to demonstrate that an Industrial Dispute qua transfer orders could have been individually espoused by them under the Industrial Disputes Act, sufficient time was given, but he could not substantiate in law that such a dispute could have been individually raised by them and subsequently referred by the appropriate government by way of a Reference for adjudication to the Industrial Tribunal-cum-Labour Court.

34. Thus, as it is apparent that no individual Industrial Dispute could have been raised by the workmen against the transfer order, the Reference made by the appropriate Government on the demand notice of the workmen was bad in law and not in consonance with the provisions of Section 2(k) of the Industrial Disputes Act. As a natural corollary, the adjudication of the said Reference by the learned Tribunal by way of award dated 04.08.2010 in Reference No. 36 of 2006 is also thus void ab initio and not sustainable in law.

35. Accordingly in view of discussion held herein-above, both the Reference made by the appropriate Government as well as the award dated 04.08.2010 passed in Reference

No. 36 of 2006, titled as Baldev Sharma and another *vs.* The Area Manager, Bata India, by learned Tribunal are quashed and set aside. Consequently, the writ petition filed by the Company, *i.e.* CWP No. 4993 of 2011, is allowed whereas the writ petition filed by the workmen, *i.e.* CWP No. 8419 of 2010, is dismissed. No orders as to costs".

24. Learned Counsel for the petitioner has vehemently argued that even if the petitioner had failed to report at new place of posting respondents did not follow due process before dispensing with the services of the petitioner hence termination of the petitioner was void and illegal.

25. The peculiar circumstances of the present case show that in order to constitute termination the intention of petitioner to continue his duties was relevant. Petitioner however did not bother to join his duty at new place of posting after which he was at liberty to raise appropriate dispute if any qua victimization by way of transfer or otherwise. He could not produce evidence qua his response if any to the various notices including relieving notice dated 13.8.2019. The pleadings of the respondent read in para No.6 page 5 of the reply as follows:—

"Further it is submitted that the transfer and termination order of the applicant has been withdrawn by the respondent and he has been directed to rejoin his old place of posting on or before 05.12.2019 and the letter has been sent to applicant *vide* registered post under receipt No.RE7537501901N but the applicant has not given any reply to the above letter. The copy of the withdrawal of promotion and transfer letter is annexed herewith as **Annexure R-I".**

26. In view of this averment the relevant notice Ext. RW1/G would not amount to termination. Petitioner has conceded unequivocally that he does not intent to join new place of posting or to avail promotion thus the intention of petitioner qua non compliance of principle of natural justice and opportunity of being heard is no more relevant in the present case. The conduct of the petitioner amounts to wilful abandonment and deliberate non compliance of transfer order from 3.8.2019 to 13.8.2019. Pertinent to observe that even being aware of his transfer the petitioner did not join his duty or raise any objection with the respondent in this regard.

27. As laid down by the Hon'ble High Court of H.P. in **Rani Sharma's case (supra)** the crux of the dispute between petitioner and respondent was transfer order and not the dismissal, discharge and retrenchment. As the petitioner has abandoned the job thus he is not entitled to any relief under Section 25 Clause F of the Industrial Disputes Act.

28. Learned counsel for the petitioner has also argued that by way transfer and relieving order the respondent has not complied with the provisions of Section 33 Clause 1 of the Industrial Disputes Act. In view of the ongoing dispute between the parties under Section 17 Clause 1 of the Governing Act with the appropriate authority. Pertinent to mention here that there is no evidence to establish that transfer of the petitioner had caused change in his service condition or prejudiced him in any manner. On the other hand he failed to join at the relevant place of posting with no plausible excuse. In the pleadings of the present claim also there is no mention of the prejudice which has been caused to the petitioner by way of transfer or any change in service condition which would have affected him adversely. No evidence has been led in this regard. Thus the petitioner avail benefit under Section 33 Clause 1 of the Industrial Disputes Act. In view of the above discussions and the evidence which has been led before this court there does not appear to be any expressed retrenchment or intentional termination of services of the petitioner by the respondent hence issues No.1 and 3 are decided in the favour of the respondent.

Issue No. 2

29. It appears from the statement of witnesses that there was no formal termination of the petitioner by the respondent. Petitioner has averred in the statement that he was unwillingly to join new place of posting without back wages. The question of back wages cannot be considered as petitioner has not joined his new place of posting as per transfer order and the principle of no work no pay would apply as the petitioner had not led any cogent evidence with regard to reasons for not joining at new place of posting or justify his absence. In these circumstances no benefits/relief can be granted in the favour of the petitioner. Hence this issue is decided accordingly.

RELIEF

30. In view of my discussion on the issues nos. 1 to 4 above, the present claim made by the petitioner against the respondent is not maintainable and the reference is decided accordingly. Parties are left to bear their costs.

31. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of April, 2025.

Sd/-
(PARVEEN CHAUHAN),

Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 508/2016
Date of Institution : 23-8-2016
Date of Decision : 28-4-2025

Shri Narender Kumar s/o Shri Jai Kishan, r/o Village Ghatewal, P.O. Bassi, Tehsil Shri Naina Deviji, District Bilaspur, H.P. ..*Petitioner.*

Versus

1. The Partners, M/S Universal Electric Engineers, Dalhousie Road Pathankot, Punjab (Contractor)

2. The Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P. (Principal Employer) ..*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For Respondent No. 1 : Sh. Madan Kumar Ld. Adv. Vice
For Respondent No. 2 : Sh. Jasbir Singh, Ld. ADA

AWARD

The following reference has been received by this court for adjudication from the appropriate Authority/Deputy Labour Commissioner:

> "Whether termination of services of Shri Narender Kumar s/o Shri Jai Kishan, r/o Village Ghatewal, P.O. Bassi, Tehsil Shri Naina Deviji, District Bilaspur, H.P. *w.e.f.* 01.07.2012 by (i) the Partners, M/s Universal Electric Engineers, Dalhousie Road Pathankot, Punjab (Contractor), and (ii) the Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P. (Principal Employer), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. The brief facts as stated in the claim petition are that the petitioner had worked as daily wage Beldar with respondent no.2 in Changer Area, Medium Lift Irrigation Scheme *w.e.f.* 1.5.2011 till 30.6.2012 continuously. The petitioner alleges that his daily wages services were terminated by the verbal order dated 01.07.2012 without any reason and without any notice which amounts to unfair labour practice on the part of the respondent. It is also alleged that on 1.7.2012 the respondents had allotted the work on contract without providing any information and all the matter kept confidential. The petitioner alleged that the respondent has violated the provisions of Section 25B, 25-F(b), 25-G and 25-H of the Industrial Disputes Act, 1947 and principle of 'Last Come First Go'. He alleged that he has worked for more than 240 days in a year. He is unemployed and till date no employment is available to him. The petitioner has prayed for reinstatement of his service alongwith seniority and continuity of service and other consequential benefit and back wages.

3. In reply on behalf of respondent No.1 preliminary objections qua maintainability, non joinder of necessary party and absence of employer employee relationship between the respondent no.1 and petitioner have been raised. On merit, it is denied that the petitioner had worked continuously *w.e.f.* 1.11.2011 to 30.6.2012. It is asserted that neither the petitioner was part time nor regular employee of respondent no.1 but he was daily rated casual labourer and his services were engaged as a daily rated casual labourer for operation of pumping machinery by respondent No. 2. The petitioner was a contractual labourer and the contract of the respondent No.1 with respondent no.2 came to an end in May, 2013 and as such the services of the petitioner were no more required by the respondent No.1. It is asserted that before completion of contract one month prior notice was given to the petitioner as well as all the payments of labourer were cleared till May, 2013. It is asserted that after completion of the work of respondent No.1 a new contract of operation and maintenance for the same pumping machinery was awarded to one Shri Vijay Kumar Contractor, M/s Vasudev Electrical VPO Mojowal (Naya Nangal), Punjab and the same labour had worked under the said contractor. All the other averments made in the claim petition are denied in parawise and it is prayed that the claim of the petitioner deserves to be dismissed.

4. In reply on behalf of respondent No.2 has raised preliminary objections qua maintainability and no employer employee relationship between the respondent No.2 and petitioner. On merits, it is denied that the petitioner was engaged as daily wage helper on 1.5.2011 by the respondent No.2 and he (petitioner) worked upto 30.6.2012 with the respondent No.2. It is also denied that the work was allotted to contractor on 1.7.2012 through tender. It is denied that the respondent No.2 had terminated the services of the petitioner. It is asserted that the Changer Area

Medium Lift Irrigation Project was constructed through various contractors and after its completion it was awarded to various contractors for operation and maintenance of the same project by outsourcing of labour in the year 2012-13. The petitioner was never engaged nor terminated by the respondent, thus there was no relationship of employer and employee between the respondent No.2 and petitioner. It is also asserted that neither the petitioner nor other workers were engaged by the respondent No. 2 when the petitioner alongwith other workers raised demand notice before the Labour-*cum*-Conciliation Officer then the respondent filed reply vide letter No. 2160-62 dated 08-01-2014 along-with list of workers mentioned in the demand notice before the Labour-*cum*-Conciliation Officer Bilaspur. Other averments made in the petition were denied and it is prayed that the petition deserved to be dismissed.

5. In rejoinder the preliminary objections were denied and facts stated in the petition have been reasserted and reaffirmed.

6. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of services of the petitioner by the respondents *w.e.f.* 01-07-2012 is/was illegal and unjustified, as alleged? ..OPP

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP

3. Whether the claim petition is not maintainable, as alleged? ...OPR

4. Whether the claim petition is bad for non-joinder of necessary parties, as alleged? ..OPR

5. Whether there exists no relationship of employer and employee between the petitioner and respondents, as alleged? ..OPR

Relief.

7. The petitioner in the present case failed to appear before this court on 09.4.2025 at Bilaspur. The report shows that the petitioner has left this country and is residing abroad. The petitioner has not appeared before this court since the year 2023. Perusal of the case file shows that this reference is earlier dismissed in default and restored by an application moved on record by the petitioner. The conduct of the petitioner thereafter shows that the petitioner is not interested in pursuing the present claim. Despite due service and knowledge of the proceedings he did not put his presence nor any Counsel/Authorized Representative appeared on his behalf. Section 10(B) Clause 9 read with the Industrial Disputes (Central) Rules, 1957."

> "10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party."

8. It is argued by learned counsel for the respondents that the onus of proving the averments and allegations by way leading oral or documentary evidence in the court is on the claimant. The learned counsel for respondent No.2 as well as learned ADA for respondent no.1 has further submitted that considering the conduct of the petitioner and the fact that he is not able to substantiate the allegations by way of adducing evidence the reference cannot be decided in favour of the claimant.

9. The perusal of the case file shows that the petitioner is not interested to peruse the present case as ample opportunities has been granted to the petitioner to appear before this court to adduce evidence oral as well as documentary. He not only failed to produce the evidence but despite having knowledge of the proceedings failed to appear before this court hence he was proceeded ex parte. The onus of proving the fact that termination of the services of the petitioner by the respondents *w.e.f.* 01.7.2012 was illegal and unjustified was on the petitioner. In absence of any evidence to this fact the reference cannot be decided in the favour of petitioner. Rule 22 of The Industrial Disputes (Central) Rules, 1957 also provides as follow:—

"22. Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—

If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

10. Hon'ble Supreme Court in **M/s Haryana Suraj Malting Ltd. vs. Phool Chand, AIR 2018 SC 2670** has observed thus under the statutory scheme the Labour Court/Tribunal is empowered to follow its own procedure as it thinks fit, meaning thereby, a procedure which is fit and proper for the settlement of the Industrial Dispute and for maintaining industrial peace. If a party fails to attend the Court/Tribunal without showing sufficient cause, the Court/Tribunal can proceed ex parte and pass an ex parte award. The award, *ex-parte* or otherwise, has to be sent to the appropriate Government as soon as it is made and the appropriate Government has to publish it within 30 days of its receipt. The award thus published becomes enforceable after a period of 30 days of its publication.

11. In the circumstances of the present case also the reference was made to this court however claimant/petitioner failed to adduce evidence to substantiate allegations.

12. In view of the above, the reference is not maintainable and is accordingly dismissed. The parties are left to bear their costs.

13. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of April, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 298/2015
Date of Institution : 13-7-2015
Date of Decision : 28-04-2025

Shri Sohan Lal s/o Shri Piru Ram, r/o Village Maloh, P.O. Kuthera, Tehsil Ghumarwin, District Bilaspur, H.P. ..*Petitioner.*

Versus

The Executive Engineer, HPPWD Division Ghumarwin, District Bilaspur, H.P.
..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Paras Gautam, Ld. Adv.
For Respondent : Sh. Jasbir Singh, Ld. ADA

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner:

"Whether the industrial dispute raised by the worker Shri Sohan Lal s/o Shri Piru Ram, r/o Village Maloh, Post Office Kuthera, Tehsil Ghumarwin, District Bilaspur, H.P. before the Executive Engineer, H.P.P.W.D. Division, Ghumarwin, District Bilaspur, H.P. *vide* demand notice dated nil received on 21.06.2005 regarding his alleged illegal termination of service *w.e.f.* 16.10.1999 suffers from delay and laches? If not, whether termination of the services of Shri Sohan Lal s/o Shri Piru Ram, r/o Village Maloh, Post Office Kuthera, Tehsil Ghumarwin, District Bilaspur, H.P. by the Executive Engineer, H.P.P.W.D. Division, Ghumarwin, District Bilaspur, H.P. *w.e.f.* 16.10.1999 without complying with provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that petitioner was engaged as daily wage beldar by the respondent. It is asserted that the petitioner had served the department with sincerity and there was no complaint against the working of the petitioner and nothing adverse was conveyed to him from any corner. The petitioner had worked with the department since May, 1997 to 15.10.1999 continuously. Thereafter the respondent terminated the services of the petitioner orally. Thereafter the petitioner against the oral termination had filed O.A. before the Hon'ble Tribunal *vide* OA No.4016/2000 and the same was disposed of on account of lack of jurisdiction. It is asserted that the petitioner had worked with the department for more than 240 days in 12 preceding calendar year with intermittent breaks prior to the oral termination of the services by the department. It is asserted that before termination of the services of the petitioner no notice was issued by the respondent. It is asserted that after dismissal of original application the petitioner raised demand notice before the Labour Office for conciliation proceedings and the same were failed and subsequently a reference was notified and labour dispute had been referred to this court. It is asserted that persons junior to the petitioner namely Raghunath, Niki Devi, Joginder Singh, Beli Ram, Chaman Lal and Mast Ram are still working with the respondent. The act of respondent retaining the junior persons and terminating the services of the senior persons without assigning any reason was illegal and arbitrary and as such the same is liable to be quashed and set aside in the interest of justice. It is asserted that persons who are junior still continue with the respondent makes it clear that sufficient fund and work was available and in such circumstances the termination of the daily wage employment of the petitioner was illegal and unconstitutional. It is asserted that the action of the respondent department was illegal, unconstitutional, malafide, arbitrary and unsustainable in the eyes of law. It is therefore prayed that the claim of the petitioner may be

allowed and termination of the petitioner may be quashed and set aside with all consequential benefits.

3. In reply to the claim petition preliminary objections qua maintainability and petitioner being engaged as beldar under Employment Assurance Scheme have been raised. On merits, it is asserted that the applicant was engaged on the basis of daily wages under the Employment Assurance Scheme (EAS) and respondent got the services of the petitioner only for 100 days under the EAS, the question of disengagement of petitioner did not rise in any manner as per policy of the Government and as such the scheme specially meant to generate employment to down trodden person. It is asserted that that the petitioner had not served continuously *w.e.f.* May, 1997 to 15.10.1997 and he worked only for 132 days in the year 1997, 110 days in 1998 and 15 days in 1999. It is asserted that the petitioner was initially engaged purely on temporary basis under the Employment Assurance Scheme on seasonal works and as such on completion of works/paucity of funds, the applicant was orally disengaged which was legal and justified. It is asserted that the crux of the scheme is that the needy persons of the respective panchayat's in which road falls would be engaged for a period of 100 days in a year. It is further asserted that the petitioner had completed 100 days under the Employment Assurance Scheme and he had no right to continue as per policy of the scheme. Moreover the petitioner had not completed 240 days in any of the preceding 12 calendar months under Section 25-F of the Industrial Disputes Act as well as for want of legal requirement of Section 25-B of the Industrial Disputes Act and as such there was no violation of any provisions of the Industrial Disputes Act. It is asserted that the persons whose name were mentioned in para no.7 of the claim petition were engaged in accordance with the orders passed by the Hon'ble H.P. State Administrative Tribunal as well as Labour Court Dharamshala. It is further asserted that Nikki Devi, Joginder Singh, Beli Ram and Mast Ram were senior to the petitioner and Raghu Nath, Chaman Lal were engaged in the same year as that of petitioner under the same Employment Assurance Scheme and the respondent had not violated any provisions of the Industrial Disputes Act. Other averments made in the petition were denied and it is prayed that the petition deserves to be dimissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the industrial dispute raised by petitioner vide demand notice dated nil qua his termination of service *w.e.f.* 16-10-1999 by respondent suffers from the vice of delay and laches as alleged? ..OPP

2. Whether termination of the services of petitioner by the respondent *w.e.f.* 16-10-1999 is/was legal and justified as alleged? ..OPP

3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP

4. Whether the claim petition is not maintainable in the present form as alleged? ..OPR

Relief.

6. The petitioner in order to prove his case has produced on record his affidavit Ext.PW1/A wherein he has reiterated the facts stated in the claim petition.

7. Respondent on the other hand has examined Er. Shashi Pal Dhiman, Executive Engineer, HPPWD Division Ghumarwin by way of affidavit Ext. RW1/A wherein he has reiterated the facts mentioned in the reply and has also produced on record copy of employment assurance scheme Ext. RW1/B, mandays chart Ext. RW1/C, copies of service records of similar situated person namely Baldev Dass etc. Ext. RW1/D1 to Ext. RW1/D9. Respondent has also examined Er. Manish Sehgal, Executive Engineer, HPPWD Division Ghumarwin, District Bilaspur, H.P. by way of affidavit Ext. RW2/A. He has also tendered in evidence the documents already marked through the statement of Shri Shashi Pal Dhiman, Executive Engineer who stand now transferred. He has re-examined the documents tendered by his predecessor as Ext. RW1/B to Ext. RW1/D9.

8. I have heard the learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondents at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	No
Issue No.2	:	No
Issue No.3	:	Decided accordingly
Issue No.4	:	No
Relief	:	Claim petition is partly allowedper operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. The petitioner has alleged that he had worked with respondent department from May, 1997 to 15.10.1999 and on his oral termination he filed OA No.4016/2000 before Administrative Tribunal which was disposed of in the year 2005 on the grounds lack of jurisdiction. This fact is not disputed by the respondent. During this period admittedly petitioner had not applied to the respondent for reinstating him but he issued demand notice in 2005 i.e. immediately after rejection of his claim from a forum lacking jurisdiction. Learned counsel for petitioner has submitted that during year 1999 till the year 2005 petitioner was bonafide pursuing his claim before wrong tribunal. The reference pursuant to the demand notice dated 21.6.2005 was declined by the appropriate authority until reference was issued on the directions of Hon'ble High Court of H.P. in CWP No.8006/2012 and the reference was finally made in June, 2015. The above series of events show that since the year 1999 uptil 2015 when the reference has been received by this court the petitioner had been diligently pursuing his case. The Hon'ble Supreme Court in **Prabhakar v. Sericulture Deptt. (2015 SCC1)** has held in paras no.40, 41 and 42 as follows:—

"40) On the basis of aforesaid discussion, we summarise the legal position as under:

An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of

taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute seized to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances discloses that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred. Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the labour authorities seeking reference or did not invoke the remedy under Section 2A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the Civil Court by filing a suit against his termination which was pending for number of years and was ultimately dismissed on the ground that Civil Court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an 'existing dispute'. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour

Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted.

41) We may hasten to clarify that in those cases where the Court finds that dispute still existed, though raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement. We are of the opinion that the law on this issue has to be applied in the aforesaid perspective in such matters.

42) To summarise, although there is no limitation prescribed under the Act for making a reference under Section 10(1) of the Act, yet it is for the 'appropriate Government' to consider whether it is expedient or not to make the reference. The words 'at any time' used in Section 10(1) do not admit of any limitation in making an order of reference and laws of limitation are not applicable to proceedings under the Act. However, the policy of industrial adjudication is that very stale claims should not be generally encouraged or allowed inasmuch as unless there is satisfactory explanation for delay as, apart from the obvious risk to industrial peace from the entertainment of claims after long lapse of time, it is necessary also to take into account the unsettling effect which it is likely to have on the employers' financial arrangement and to avoid dislocation of an industry".

11. In the light of the facts and circumstances of this case file it cannot be held that the claim of the petitioner can be denied due to any delay and laches on his part. He was diligently pursuing the case bonafide before wrong tribunal and thereafter having acquired knowledge approached appropriate authority and he filed demand within reasonable time, thus issue no.1 cannot be decided in the favour of the respondent.

Issue No. 2

12. The petitioner has claimed in the petition that he had worked from May, 1997 to 15.10.1999 having completed 240 days each year. It is however also averred that he was given intermittent breaks. The mandays chart of petitioner is produced on record which shows that petitioner had worked for 132 days in the year 1997, 110 days in 1998 and 15 days in 1999. The claim was raised in the year 1999 before Administrative Tribunal. The petitioner has admitted that he had not worked for 240 days or more in any calendar year but he insisted the respondent deliberately removed him from work. The petitioner is shown to be engaged in the year May, 1997. The mandays chart of one Baldev Dass s/o Sant Ram Ext. RW1/D1 shows that he did not complete 240 days of work in the year 1997 or in the year 1998 however he was regularized on 9.9.2009 on the directions of the court vide Award dated 20.12.2008. Similarly one Raghu Nath s/o Sh. Chandu Ram was engaged in July, 1997 *vide* Ext. RW1/D4. He did not complete 240 days in the year 1997 and 1998. Vide Ext. RW1/D6 one Shri Joginder s/o Shri Sukh Ram had also worked for only 109 days in the year 1997. Shri Beli Ram s/o Shri Nathu Ram vide Ext. RW1/D7 was employed in the month of April, 1997 but did not complete 240 days of work in the year 1997, 1998 and 1999. Vide Ext. RW1/D8 Shri Chaman Lal s/o Shri Ramji did not complete 240 days in the year 1997, 1998 and in the year 2007. It is clear that Raghu Nath and Chaman Lal are still working with the department and Raghu Nath was junior to the petitioner. It has been suggested to petitioner in his cross-examination that Chaman Lal was also appointed alongwith the petitioner. Baldev s/o Sant Ram was also junior to the petitioner. The documents pertaining to Baldev clearly shows that Baldev was regularized on the directions of the court.

13. The fact that petitioner was employed even for more than 100 days in 2 years as shown his mandays chart and merely 15 days during year 1999 clearly shows that the employment of the petitioner was not accordance with the EAS as asserted by the respondent. Nothing in the Industrial Disputes Act however excludes its compliance under definitive scheme of the government whether Centre of State. The petitioner was given intentional breaks as the respondent has not brought any evidence to show that there was paucity of funds and work during the year of employment of petitioner. It is evident that Shri Baldev and Raghu Nath were junior to the petitioner as they were employed after May, 1997. It was incumbent upon the respondent to issue notice to the petitioner offering him re-employment before employing Baldev and Raghu Nath. The Industrial Disputes Act does not exclude the compliance of Section 25 Clause H even if persons were employed on the directions of the court.

14. The above evidence clearly reveals that respondent had appointed persons subsequent to disengagement of petitioner without issuing any notice to the petitioner to join the work. There is no evidence of abandonment of work as alleged by the respondent during their evidence. The workmen junior to the petitioner were retained and regularized and this was in clear violation of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act. Thus it is proved that while terminating the services of the petitioner the respondent had violated the basic provisions of the Industrial Disputes Act. Hence this issue is decided in the favour of the petitioner.

Issue No. 3

15. It is prove from oral and documentary evidence on the case file that the respondent has intentionally provided breaks in the services of the petitioner not allowing him to complete 240 days of work during year of his employment and also subsequently committed violation of specific provisions of Sections 25-G and 25-H of the Industrial Disputes Act. In these circumstances the petitioner is held entitled to reinstatement in the same capacity in which he was working at the time when his services were terminated. He is also held entitled to continuity in service from the date of his initial employment. In addition to it the petitioner is also held entitled compensation of Rs.1 lakh in lieu of back wages. This issue is decided accordingly.

Issue No.4

16. The maintainability of the claim was primarily challenged on the ground that petitioner had not completed 240 days of continuous work and also on account of delay and laches. It has been established from the evidence on the case file that respondent has intentionally provided fictional breaks to the petitioner not allowing him to complete 240 days of continuous service of work and also that the claim of the petitioner never died as he continued to pursue his case till the reference was issued by the appropriate authority. Hence claim petition is maintainable and this issue is decided in the favour of the petitioner.

RELIEF

17. In view of my discussion on the issues No. 1 to 4 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled to reinstatement in the same capacity in which he was working at the time when his services were terminated. He is also held entitled to seniority and continuity in service from the date of his disengagement. In addition to it the petitioner is also held entitled compensation to the tune of Rs.1 lakh in lieu of back wages. Parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of April, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 187/2017
Date of Institution : 16.8.2017
Date of Decision : 28.04.2025

Shri Mohar Singh s/o Shri Sobha Ram, r/o Village Jaghar, P.O. Kalhani, Tehsil Thunag, District Mandi, H.P. ..*Petitioner.*

Versus

1. The Deputy Director (Primary) Mandi, District Mandi, H.P.

2. The Head Master, Member Secretary (SMC) Primary School Ghat, Tehsil Thunag, District Mandi, H.P. ...*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Narender Kumar, Ld. Adv.
For Respondent(s) : Sh. K.R. Thakur, Ld. ADA

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner.

> "Whether termination of the services of Mohar Singh s/o Shri Sobha Ram, r/o Village Jaghar, P.O. Kalhani, Tehsil Thunag, District Mandi, H.P.*w.e.f.* 01-05-2014 by (i) the Deputy Director (Primary) Mandi, District Mandi, H.P. (ii) the Head Master Member Secretary (SMC) Primary School Ghat, Tehsil Thunag, District Mandi, H.P. who was employed as mid day meal worker, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The brief facts as stated in the claim petition are that petitioner was appointed as MDM worker by the Pradhan PTA/MTA/BCA/SMC on 5.9.2004 but the department had wrongly terminated the services of the petitioner without complying with the mandatory provisions of the Industrial Disputes Act as well as without assigning any reason. The act of department was highly wrong and illegal while retaining one Tule Ram s/o Shri Kahan Singh, r/o Village Khunachi, Tehsil

Thunag, Mandi, H.P. in place of petitioner/claimant. It is asserted that the respondents were falling within the ambit of Section 2(J) of the Industrial Disputes Act and the petitioner/claimant was the workman within the meaning of Section 2(S) of the Act. It is asserted that in case of surplus workers as per principle of 'last come first go' would not be applied in the case of petitioner/claimant because direction were given by the Hon'ble Apex Court in Writ Petition (Civil) No.196/2001 dated 20.4.2004 in para no.4. While terminating the services of the petitioner the respondents had not followed the statutory provisions of law more particularly they had not complied with the Section 25-F of the Industrial Disputes Act. It is asserted that neither the retrenchment notice nor wages in lieu thereof was given to the petitioner. It is asserted that the petitioner had worked continuously for more than 10 years and completed 240 days in each calendar year preceding 12 months. No domestic inquiry against the petitioner nor any order/notice was issued at the time of retrenching him from service therefore oral order of termination is liable to be set aside. It is prayed that the order of termination of the services of petitioner may be set aside and the petitioner/claimant may reinstated from the date of termination along-with back wages, seniority, past service benefits, compensation and other consequential benefits.

3. In joint reply on behalf of the respondents to the claim petition preliminary objections have been raised qua maintainability, cause of action, jurisdiction and petition being bad for non-joinder of necessary party. On merits, it is admitted that the petitioner was appointed as Mid Day Meal Worker. It is asserted that National Programme of Nutritional Support to primary education popularly known as Mid-Day-Meal Scheme was launched by the Government with certain objectives and under this scheme hot cooked meal was decided to be served on all school days to the students studying in 1st to 8th class in the Government and Government aided schools. In order to smooth functioning of this scheme, guiding principles were framed by the Government for hiring the services of cook-*cum*-helper in which the executive committee of School Managing Committee (SMC) of the concerned school was declared their appointing and disciplinary authority, hence the services of cook-*cum*-helper were not controlled by the respondent State. Therefore cook cum helper engaged by the School Managing Committee under prescribed norms was a non-government and a volunteer worker of the School Managing Committee of concerned school for all intends and purpose who was being paid fixed amount from honorarium Head etc. The act and conduct of claimant led to retrench of the services of the petitioner was done by the school managing committee with legal and justified approach by retaining the services of one Shri Tule Ram. It is asserted that preparation of mid day meal in schools could not be assimilated under the definition of Industrial Disputes Act. It is asserted that the claimant and one Sh. Tule Ram were appointed by the school managing committee of Government Primary School Ghat, District Mandi as cook cum helper for preparation of Mid day meal for smooth execution of this centrally sponsored scheme and both started preparing mid day meal on same dated i.e. 5.9.2004. It is further asserted that at the time of engagement of claimant along-with Tule Ram the strength of students in government primary school Ghat, District Mandi was above 25 and both of them worked continuously. Consequently, when students strength declined below 25 the services of claimant were dispensed with by School Managing Committee by retaining services of Sh. Tule Ram being senior in age. Moreover in accordance with the guiding principles framed by the Government, the service of such surplus persons were required to be terminated without giving any prior notice on declining of students' strength. It is asserted that the aspect in this regard has already been considered by the Hon'ble High Court of HP in judgment dated 24.5.2011 in CWP No.1659 of 2011. In the light of the facts of the case the claimant is estopped by his act and conduct to file the present claim petition against the respondents. Other averments made in the claim petition were denied and it is prayed that the petition deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether the termination of the services of the petitioner by the respondents *w.e.f.* 01-05-2014 is/was illegal and unjustified, as alleged? ...OPP

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP

3. Whether the claim petition is not maintainable, as alleged? ..OPR

4. Whether the petitioner has no cause of action to file present case, as alleged? ..OPR

5. Whether this Court has no jurisdiction to decide the present case, as alleged? ..OPR

6. Whether the claim petition is bad for non-joinder of necessary parties, as alleged? ..OPR

Relief.

6. The petitioner in order to prove his case has produced on record his affidavit Ext.PW1/A wherein he has reiterated the facts stated in the claim petition. He has also examined Shri Kundan Lal s/o Bisu Ram by way of affidavit Ext. PW2/A.

7. Respondents on the other hand has examined Shri Amar Nath Rana, Dy. Director of Elementary Education, District Mandi by way of affidavit RW-1 wherein he has reiterated the facts mentioned in the reply and has also produced on record copy of guidelines Ext. R-1, list of enrolment of students R-2 and copy of order Ext. R-3.

8. I have heard the learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondents at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	:	Partly yes
Issue No. 2	:	Decided accordingly
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Issue No. 6	:	No
Relief	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner Mohar Singh has stated on oath that he was appointed as MDM worker by Pradhan PTA/MTA/BCA/SMC on 5.4.2004 but his services were retrenched by the department without following mandatory provisions of the Industrial Disputes Act. He has emphasized in his deposition that in accordance with the direction of Hon'ble Apex Court in Writ Petition (Civil) No.196/2001 dated 20.4.2004 and directions given in para no.4 in the appointment of Cooks and

Helpers preference shall be given to dalit, schedule castes and schedule tribe and the petitioner had got preferential right because he belongs to schedule caste community and was appointed on the directions of Hon'ble Supreme Court. It is also asserted by him that respondent failed to comply with the statutory provisions of law i.e. Section 25 Clause F of the Industrial Disputes Act. He asserts that he worked for 240 days in each year continuously for 10 years prior to his disengagement. In order to support his case he also examined Shri Kundan Lal who has stated on oath that petitioner was never given any retrenchmet notice or wages in lieu thereof. Junior workman Tule Ram was engaged by respondent in place of the petitioner. He has also confirmed that petitioner continuously worked for more than 10 years and completed 240 days of work in each calendar year in the preceding 12 months. He also asserts that neither any domestic inquiry was carried out against the petitioner nor he was issued any notice hence his disengagement was illegal and against the basic provisions of the statute. The respondents on the other hand have asserted that in order to ensure the functioning of scheme guiding principles were framed by the government for hiring the services of cook-*cum*-helper in which executive committee of School Managing Committee of the concerned school was declared their appointing and disciplinary authority. The cook-*cum*-helper was engaged in the school management committee under prescribed norms is non as governmental and volunteer worker of school management committee of concerned school for all intents and purposes who was being paid fixed amount from honorarium head. The school managing committee had retained the services of Tule Ram as petitioner and Tule Ram were appointed on same date *i.e.* 5.4.2004 and in accordance with the rules. Since the strength of students fell below 25 the services of the cook who was senior in age to the petitioner was retained. In order to lay emphasis on the process which have been followed in the disengagement of the petitioner guidelines norm for engaging cook-*cum*-helper under Mid Day Meal Scheme has been produced on the case file.

11. This court has received a specific reference in order to determine whether the termination of the services of the petitioner on 1.5.2014 by the respondent was in violation of the provisions of the Industrial Disputes Act, 1947 or whether it was legal and justified.

12. Contrary to what has been argued by learned Dy. D.A. for State the petitioner who had employed as a cook for mid day meal scheme fell within the definition of workman which provides under the Industrial Disputes Act, 1947. Section 2(s) was as follows:—

> "(s)["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- *[Substituted by Act 46 of 1982, Section 2, for Cl. (s) (w.e.f. 21.8.1984).]*(i)who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or (ii) who is employed in the police service or as an officer or other employee of a prison, or (iii) who is employed mainly in a managerial or administrative capacity, or(iv)who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

13. Though it is argued that the educational institution and specifically the school management did not fall within the definition of industry. It is important to refer to findings on the Hon'ble Supreme Court in **CIVIL APPEAL NO. 1020 OF 2011 RAJ KUMAR Vs. DIRECTOR OF EDUCATION & ORS.** in para 19 as follows:—

"19. The issue whether educational institution is an 'industry', and its employees are 'workmen' for 4 (1997) 5 SCC 737 Page 20 20 the purpose of the ID Act has been answered by a Seven-judge Bench of this Court way back in the year 1978 in the case of Bangalore Water Supply (supra). It was held that educational institution is an industry in terms of Section 2(j) of the ID Act, though not all of its employees are workmen. It was held as under:

"The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not 'workmen' and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesis, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the Page 21 21 personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations." (emphasis laid by this Court).

A perusal of the above mentioned two judgments clearly shows that a driver employed by a school, being a skilled person, is a workman for the purpose of the ID Act. Point No.1 is answered accordingly in Page 22 22 favor of the respondents. The provisions of ID Act are applicable to the facts of the present case".

14. The present respondents i.e. the Deputy Director (Primary) Mandi, District Mandi, H.P. and the Head Master, Member Secretary (SMC) Primary School Ghat, Tehsil Thunag, District Mandi, H.P. are directly and indirectly involved in the educational institution throughout the State including the Primary School at Ghat thus respondents by the nature of work being undertaken by the other employees involved in the functioning in the education institution falls within the definition of industry under the Industrial Disputes Act. Considering the above facts it was incumbent upon the respondents while employing a workman to comply with the provisions of Section 25 Clause F of the Industrial Disputes Act before dispensing with his services otherwise then by way of disciplinary action, voluntary abandonment or superannuation. The definition of workman under the Industrial Disputes Act does not make any distinction of temporary and permanent worker. In the present case the respondents have mentioned in para 3 of their reply as follows:—

"3 That the claimant and one Sh. Tule Ram were appointed by the school managing committee of Government Primary School Ghat, District Mandi as Cook-*cum*-Helper for preparation of Mid day meal for smooth execution of this centrally sponsored scheme and both started preparing Mid day meal on same date *i.e.* 05.9.2004. concurrently, Government also advised following enrolment slab for engaging Cook-*cum*-Helper:—

Sr. No.	Enrolment Slab	No. of cook-*cum*-helper allowed
1.	1-25	1
2.	26-100	2
3.	For every next 100 students	1 additional Cook-*cum*-Helper

It is submitted that at the time of engagement of the claimant alongwith one Sh. Tule Ram, the student's strength in Government Primary School Ghat, Distt. Mandi was above 25 and both of them remained working continuously".

15. It appears from the reply itself that petitioner had continuously worked with the respondents since 5.9.2004 till his services were dispensed with. Petitioner has alleged that his services were terminated on 1.5.2014. Perusal of reply filed by the respondents shows that it does not specify the exact date on which service of the petitioner were terminated. It is however pertinent to observe the cross-examination of RW1 Shri Amar Nath Rana, Dy. Director of Elementary Education, District Mandi, H.P. who has self stated in his cross-examination that the services of petitioner terminated on 30.1.2011. Respondents have produced on record the enrolment of students *w.e.f.* academic session 2004-05 to 2019-20 and GPS Ghat Siraj-II Balichowki, District Mandi, H.P. Going with the statement of RW1, in case petitioner was disengaged from his services in the year 2011 it was per se not in accordance with the guidelines of the scheme during year 2011-12 as there were 30 students in the school. In case services of petitioner were disengaged in the year 2014 and 2015 the strength of students had fallen to 21 however taking into consideration the fact that the respondents' institution fell within the definition of industry, the respondent should have mandatorily complied with the provisions of Section 25 Clause F of the Industrial Disputes Act. The Hon'ble Supreme Court in **Mohan Lal *vs.* Management of M/S Bharat Electronics, AIR 1981 1253** has held that "*Undoubtedly therefore the termination would constitute retrenchment and by a catena of decisions it is well settled that where pre- requisite for valid retrenchment as laid down in section 25F has not been complied with, retrenchment bringing about termination of service is ab initio void.* Though Learned Dy. D.A. for the State has emphasized in accordance with the terms and conditions of the policy Clause (e) the contract of the person selected could be terminated without giving any prior notice. However said terms and conditions and clear violation and overriding of basic provisions of the Industrial Disputes Act. It is further submitted that the Hon'ble High of H.P. in CWP No.1659 of 2011 has condoned the termination of cook-cum-helper on the grounds that reduction of students and authorized to retain the person who was senior in age. It is pertinent to mention here that if in accordance with the policy due to reduction of number of students it was necessary to retrench the services of the petitioner, respondents were burdened to comply with the provisions of Section 25 Clause F of the Industrial Disputes Act. The dispute is regarding the due process which has not been followed by the respondents in this case. The contention of the petitioner that he should have been retained on the basis of his caste is not reflected from the terms of the policy and the same is applied only to the initial appointment on preferential basis. The dispute in the present case is regarding retaining one of the workman which was done in accordance with the directions of Hon'ble High Court of HP in CWP No.1659 of 2011. To sum up the oral and documentary evidence which have been produced before this court it is clear that the respondents have dispensed with the services of the petitioner

without complying with the mandatory provisions of the Industrial Disputes Act and hence the termination of the petitioner was illegal and unjustified. Issue no.1 is decided in the favour of petitioner.

Issue No. 2

16. The petitioner in the present case has specifically pleaded that he should be provided all the service benefits from the date of his illegal retrenchment. This court however cannot overlooked the basic guidelines issued by the Government of H.P. regarding engagement of cook-*cum*-helper for mid day meal scheme. It is specifically mentioned therein that hiring of cook-*cum*-helper would be in proportion to the number of students enrolled in the school. The petitioner has alleged he was engaged in the year 2004-05. Ext. R2 is clearly shows that in the year 2014-15 the enrolment of the school only of 21 students and in accordance with policy one person could be retained out of the two. It has been discussed in detail while deciding issue No. 1 however considering the specific decline in the number of students in the educational institution of the respondents, the petitioner could not be granted the relief of reinstatement. Considering the fact that the termination of the petitioner was in violation and without compliance with the mandatory provisions of the Industrial Disputes Act, the petitioner is held entitled for compensation of Rs.1 lakh along-with interest @ 6% per annum from the date of his retrenchment till the realization of the amount. Hence this issue is decided accordingly.

Issues No. 3, 4, 5 and 6

17. The onus of proving these issues was on the respondent. The respondents have admitted the continuous services of petitioner for almost 10 years. It is also clear from the evidence that while dispensing with the services of the petitioner mandatory provision of the Industrial Disputes Act were not complied with thus valid cause of action arose in the favour of the petitioner. No specific evidence has been led to show that there was any other necessary parties to the present dispute. Considering the nature of dispute between the petitioner and respondents the same falls within the jurisdiction of this court and the petition is maintainable. Accordingly issues No. 3, 4, 5 and 6 are decided in the favour of the petitioner and against the respondents.

RELIEF

18. In view of my discussion on the issues no. 1 to 6 above and considering the facts and circumstances of the present case the reinstatement and other consequential benefits cannot be granted in favour of the petitioner but the petitioner is held entitled for compensation to the tune of □1,00,000/- (Rupees one lakh only) along-with interest @ 6% per annum from the date of his retrenchment till the realization of the amount. Parties are left to bear their costs.

19. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of April, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Reference No. : 58/2021
Date of Institution : 12.3.2021
Date of Decision : 28.04.2025

Shri Bhoop Singh s/o Shri Jindu Ram, r/o Village Gehri, P.O. Khadyad, Tehsil Kotli, District Mandi, H.P. ..*Petitioner.*

Versus

The Manager/ Proprietor, M/s Shaheed Khem Chand Indane Gas Service, V.P.O. Kotli, District Mandi, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Khub Ram Sharma, Ld. Adv.
For Respondent : Sh. B.B. Sharma, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Joint Labour Commissioner:

> "Whether the termination of services of Shri Bhoop Singh s/o Shri Jindu Ram, r/o Village Gehri, P.O. Khadyad, Tehsil Kotli, District Mandi, H.P. *w.e.f.* 14-05-2020 by the Manager/Proprietor, M/S Shaheed Khem Chand Indane Gas Service, V.P.O. Kotli, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that the respondent was last employer of the petitioner workman. It is asserted that the petitioner/workman was engaged on 1.10.2012 as Office Manager in the establishment of respondent employer and as such the petitioner workman served till the illegal termination of the services. No appointment letter was handed over to the workman by the employer and the same is under possession and control of the respondent. On 13.5.2020 the respondent employer had directed orally to the workman that his services were terminated *w.e.f.* 14.5.2020 and he need not come to office. His services were terminated at the time of pandemic emergency/lockdown as imposed by the H.P. Government. It is asserted that the respondent employer had engaged fresh workman in place of the petitioner workman immediately after illegal termination of the petitioner. Neither one month's notice nor he was paid salary in lieu of one month notice and as such the employer committed sheer violation of the principles of the Industrial Disputes Act. On 18.5.2020 the workman petitioner had filed a complaint online with the department of Labour and Employment, Govt. of H.P. It is asserted that on 5.7.2020 and 21.7.2020 the respondent had written to the workman petitioner whereby respondent had made bald allegations after termination of the petitioner workman without asking even a single time. It is asserted that the petitioner workman was felicitated with Excellent Service by the District Controller, Food, Civil Supply and Consumer Affairs, Mandi, H.P. and therefore workman petitioner was honest person dedicated to his employer all the times. The conciliation proceedings were initiated on 19.6.2020 before Labour Inspector-cum-Conciliation Officer, Mandi with regard to illegal termination of the services of the petitioner workman but the employer had not been

participated the conciliation proceedings. It is asserted that on 6.7.2020 the Labour Officer contacted the workman telephonically and advised him to file his demand notice as per law. On 10.7.2020 the workman had raised his demand notice under Industrial Disputes Act with the employer respondent under intimation to Labour Inspector-cum-Conciliation Officer, Mandi. It is further asserted that on 10.8.2020 and 14.9.2020 workman had again written to employer respondent under intimation to Labour Inspector-cum-Conciliation Officer, Mandi with regard to his reinstatement in service but of no avail. On 10.10.2020 the respondent employer had responded to the workman wherein the employer respondent had put forth bald allegations against the workman but the same were actually not true and it was the self fabricated story of the respondent. Thereafter the petitioner had once again raised grievances with the respondent employer and requested the employer to restore his services. At that time the workman was very much under stress as he was the sole bread earner of the family. It is asserted that the conciliation proceedings were not fruitful and successful and as such a report under Section 12(4) of the Industrial Disputes Act and thereafter the present reference was sent to this court for adjudication. It is therefore prayed that the claim petition may be accepted and allowed and respondent employer be directed to reinstate the petitioner along with arrears, back wages etc. *w.e.f.* termination till its realization.

3. In reply to the claim petition preliminary objections qua maintainability, suppression of material facts, estopple, locus standi, and cause of action have been raised. On merits, it is specifically denied that the petitioner was wrongly and illegally retrenched and respondent was last employer of workman petitioner. It is alleged that the petitioner had intentionally concealed material facts he was carrying out the business of Lok Mitra Kendra under other employer and that of recharging and issuance of sim card. The respondent had admitted the employment of petitioner workman *w.e.f.* 1.10.2012 with concerned respondent named and styled as M/s Shahid Khem Chand Indane Gas Service but denying the allegations qua petitioner's illegal termination by the respondent. It is alleged that the petitioner was carrying out simultaneous business and was coming to office at his own fancy and whims. It is alleged that on 13.5.2020 the respondent had directed orally that his services were terminated *w.e.f.* 14.5.2020 and he need not come to office during pandemic Lock Down. It is asserted that the workman/petitioner was working on temporary basis and he was not coming to office nor had responded telephonic calls *w.e.f.* 10.5.2020 and did not adhere to the work which was assigned to him, despite payment credited into his bank account for the month of April, May, 2020 despite his absence from the duty and wrong doings. Thus as such allegations to the contrary as contained in the petition are denied. It is alleged that the workman petitioner had left the job willingly which caused substantial loss to the respondent. All other averments made parawise in the petition are denied and it is prayed that the statement of claim may be dismissed with heavy costs.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of the services of petitioner *w.e.f.* 14.5.2020 by the respondent without following the mandatory provisions of the I.D. Act, 1947 as claimed? ..OPP

2. If issue No.1 is proved in affirmative, to what relief the petitioner is entitled to and against whom? ..OPP

3. Whether the claim petition is not maintainable, as alleged? ..OPR

4. Whether the petitioner is estopped by his act, conduct and acquiescence to file the claim, as alleged? ..OPR

Relief.

6. The petitioner has examined one Shri Prem Lal Sharma, District Food and Supply Offices as PW1 by way of examination-in-chief wherein he has stated that as per record appreciation letter was issued to the petitioner by the department and he had seen original and the same is Ext. PW1/A. The petitioner in order to prove his case has produced on record his affidavit PW-2. He has also produced on record copy of notification Ext. P-1, complaint Ext. P-2, copies of various letters Ext. P-3 to Ext. P-11, experience certificate Ext. P-12 and copy of application under RTI Ext. P-13 and copy of reply Ext. P-14.

7. Respondent on the other hand has examined Smt. Promila Devi w/o late Shri Khem Chand Rana by way of affidavit Ext. RW1/A wherein she has reiterated the facts mentioned in the reply.

8. I have heard the learned Counsel for both the parties at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Yes
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	No
Relief	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1

10. This reference is made qua the dispute of alleged illegal termination of petitioner Shri Bhoop Singh by the employer respondent who is proprietor of M/s Shaheed Khem Chand Indane Gas Service, VPO Kotli, District Mandi. Affidavits have been produced by both the parties and the petitioner in his affidavit has alleged that he was serving as Office Manager in the office of respondent from 1.1.2012 till the termination of his services. The respondent in the reply to the statement of claim as well as affidavit produced on his behalf has not clearly denied that petitioner was an employee of the respondent. In-fact RW1 Smt. Promila Devi, Proprietor of M/s Shahid Khem Chand Indane Gase Service has made statement in her cross-examination that petitioner was employed as a workman. The respondent has made various allegations of misconduct against the petitioner but did not deny that the petitioner was an employee of respondent for specific period. Petitioner has alleged that he had demanded attendance register through RTI for the period of 1st October, 2012 to 13.5.2020 along-with last drawn salary of the petitioner but the same was not provided by the respondent. Experience certificate Ext. P12 is produced in this court with regard to the employment of the petitioner with the respondent from 1.10.2012 to 31.1.2019 and RW1 Smt. Promila Devi has admitted her signatures present inside the red circle on this experience certificate. The respondent has alleged that these signatures are in respect of pre signed letter pad which was misplaced but there is nothing on record to show that she had ever reported before any authority that any letter pad of her firm was missing. The respondent has denied that she has failed to supply the attendance register, leave and wages record to the petitioner but she has admitted that no such record has been produced on the case file nor is produced by her during course of her evidence. Notices Ext. P3 and Ext. P4 issued by the respondent to the petitioner already show that petitioner had worked with the respondent till May, 2020. The oral and documentary evidence produced along-with the pleadings of the parties clearly proved that the petitioner had worked with

the respondent as a workman under Industrial Disputes Act and had worked continuously for 240 days prior to his disengagement. Non production of the called for record qua wages and attendance register of the petitioner by the respondent further leads to in adverse inference against the respondent in this regard. Moreover no specific objection qua completion of 240 days of continuous work of the petitioner with the respondent has been raised in the pleadings by the respondent thus the case of the petitioner squarely falls under Section 25-B of the Industrial Disputes Act and thus the mandatory requirement for claim under Section 25-F of the Act.

11. In the light of the allegations of illegal termination of the petitioner it is pertinent to mention here that according to petitioner his services were terminated *w.e.f.* 14.5.2020 vide oral order on 13.5.2020. On 18.5.2020 the petitioner filed a complaint online with the department of Labour and Employment, Government of H.P. which is Ext. P2. Vide letter Ext. P3 dated 5.7.2020 and letter Ext. P4 dated 21.7.2020 the notices accusation and allegations against the petitioner was given by the respondent. It is interesting to observe even prior to 14.6.2020 Labour Office-cum-Conciliation Officer vide Ext. P5 had initiated conciliation proceeding in which the respondent did not participate.

12. The respondent has failed to produce any record of leave availed by the petitioner and clearly stated that he was worked from 9 AM to 5 PM. Certain specific allegations have been made on behalf of respondent to the effect that petitioner left the job out of his own will. The petitioner had been erasing the data from the computer of his office and carried on private business as Lok Mitra Kendra selling sim cards etc. It is also alleged that work of the petitioner was always pending. In the light of these allegations the respondent has however admitted that regarding these allegations they did not issue any notice neither conducted any inquiry against the petitioner. As already mentioned above the notice Ext. P3 dated 5.7.2020, notice Ext. P4 dated 21.7.2020 were issued subsequent to the complaint already made by the petitioner regarding his illegal termination against the respondent and during the pendency of conciliation proceedings before the appropriate authority. There is no prior documentary record of any misconduct by the petitioner no such documentary evidence in support of the contention of the respondent could be produced by them. This implies that notices were issued subsequent to the raising of demand notice merely to defend his illegal termination. There is no evidence to show that petitioner had left the work at his own will. Non production of document regarding the employment of the petitioner by the respondent also raise an adverse inference in favour of the petitioner. To sum up the consequence of the evidence produced on behalf of parties in respect of the allegations of misconduct no inquiry was ever conducted nor any show cause notice was issued to the petitioner. Respondent has failed to produce any terms of employment mentioning the contention of termination on allegations of misconduct. No oral or documentary evidence have been produced to show that there was abandonment or intention on the part of the petitioner to abandon his job with respondent. Thus the disengagement of the petitioner falls within the ambit of Section 25 Clause F of the Industrial Disputes Act and was carried out without following the mandatory provisions of the Industrial Disputes Act. Issue no.1 is accordingly decided in the favour of the petitioner.

Issue No. 2

13. It has been proved to the satisfaction of this court that the respondent has dispensed with the services of the petitioner without following the mandatory provisions of law. In these circumstances the petitioner who was working an Office Manager of the respondent is entitled to reinstatement on the same post. He is also entitled compensation of Rs.1 lakh in lieu of back wages. This issue is decided accordingly.

Issues No. 3 & 4

14. The onus of proving these issues was on the respondent. The factum of employer employee relationship is not denied or contested and it is proved from the overwhelming evidence

that the services of the petitioner were disengaged without following mandatory provisions of law. The respondent has not been able to produce any evidence of wilful abandonment of service by the petitioner which would act as estopple against him in the present claim. Thus issues no. 3 and 4 are also decided in the favour of the petitioner.

RELIEF

15. In view of my discussion on the issues no. 1 to 4 above, the claim petition succeeds and is partly allowed. The petitioner who was working an Office Manager of the respondent is entitled to reinstatement on the same post on similar terms. He is also entitled compensation of Rs.1 lakh in lieu of back wages. Parties are left to bear their costs.

16. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 28th day of April, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT UNA)

Reference No. : 43/2019
Date of Institution : 22.4.2019
Date of Decision : 30.04.2025

Shri Joginder Singh s/o Shri Bhandari Ram, r/o Village Laloh, P.O. Tikkri, Tehsil Bhatiyat, District Chamba, H.P. ..*Petitioner.*

Versus

The Employer/Managing Director, M/S Saini Techno Constructs (P) Ltd., Small Hydro Project, Village Lahar, P.O. Tikari, Tehsil Bhatiyat, District Chamba, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Kuldeep Sen, Ld. Adv.
For Respondent : Sh. Atul Mahendru, Ld. Adv.

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Deputy Labour Commissioner:

"Whether termination of services of Shri Joginder Singh s/o Shri Bhandari Ram, r/o Village Laloh, P.O. Tikkri, Tehsil Bhatiyat, District Chamba, H.P. *w.e.f.* 25.11.2016 (as alleged by workman) by the Employer/Managing Director, M/s Saini Techno Constructs (P) Ltd., Small Hydro Project, Village Lahar, P.O. Tikari, Tehsil Bhatiyat, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/Management?"

2. The brief facts as stated in the claim petition are that petitioner was appointed as field attendant/survey boy/semiskilled as per joining letter *w.e.f.* 3.5.2011 on the salary of Rs.5000/- per month. It is asserted with regard to employment of petitioner a separate agreement was executed between Mr. Ashwani Saini, M.D. of the Techno Contructs (P) company and petitioner Joginder Singh s/o Shri Bhandari Ram which was attested by the Executive Magistrate, Sub-Tehsil Sihunta and as per agreement it was agreed by M.D. of the company to give employment to the petitioner for his land which was acquired by the said company. It is asserted that the job would be provided on daily basis till the completion of the project and thereafter regular job would be provided and salary would be given as per minimum wages act of Himachal Pradesh. On 12.10.2016 the applicant was taken into custody by the police on false and flimsy grounds in a criminal case. Thereafter due to enmity with some person in the village bail had been granted to the petitioner but no final verdict/adjudication yet had been given by the learned Court in his case. Therefore the applicant/petitioner is not an accused till now and he has to face the trial and contest his case. It is asserted that the applicant had rendered his services from last six years faithfully and with utmost sincerity and no previous criminal misconduct is there nor the petitioner was sentenced for any criminal act of misconduct at any stage. It is asserted that the wife of applicant Usha Devi had given intimation to the manager of the company which was received on 12.11.2016 wherein she has explained the reason of non presence of her husband in his duty. On 25.11.2016 the applicant received a legal notice from the counsel of Manager M/s Saini Techno Constructors (P) company and in that notice the company had decided to terminate the services of the applicant. The management had given his decision without being heard which according to applicant was against the law of natural justice. It is asserted that the children of the applicant are school going and dependent upon the applicant only and his wife is a house hold lady. Aggrieved by such act of the respondents the applicant served upon counsel of the respondent with reply of the said legal notice through his counsel on 3.1.2017 and requested for reinstatement of his services within 15 days from the receipt of the reply but no action was taken by the company till date. It is therefore prayed that the present statement of claim/reference may be allowed and illegal termination of the services of the applicant may be held illegal, arbitrary, unwarranted and violative of the provisions as agreement and of the provisions of Industrial Disputes Act, 1947. It is prayed that the respondent may be ordered to reinstate the applicant in the same capacity along with all consequential benefits from October, 2016 as well as the respondent be burdened to pay compensation to the applicant besides litigation cost amounting to Rs.50000/- alongwith interest.

3. In reply to the claim petition preliminary objections qua maintainability, jurisdiction, cause of action, locus standi, estopple and suppression of material facts have been raised. On merits, it is admitted that the Saini Techno Constructs Pvt. Ltd. is running a Hydro Electric Project. It is denied that respondent made the applicant land less, infact the respondent had not purchased the land from the petitioner and also denied that the petitioner had given his own land. It is admitted that an agreement was made between the parties. It is also admitted that the petitioner was taken into police custody. Infact the petitioner was found having indulged in NDPS case and an FIR was registered against him vide FIR No.0129 dated 12.10.2016. It is alleged that the fact was concealed by the petitioner as well as his family member. It is asserted that in earlier episode the petitioner had also indulged in some penal activities and written apology was filed by him and thus he had lower down the reputation of the respondent company. It is denied that the petitioner had

given his service from last six years faithfully and with utmost sincerity. It is asserted that on 31.10.2016 respondent had issued show cause notice to the petitioner but the same was returned undelivered and one copy was sent to Labour Inspector, Dalhousie, District Chamba. All other parawise averments were denied and it is prayed that the petition deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of services of the petitioner by the respondent *w.e.f.* 25.11.2016 is/was illegal and unjustified, as alleged? ..OPP

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? ..OPP

3. Whether the claim petition is not maintainable, as alleged? ..OPR

4. Whether this court has no jurisdiction to decide the present case? ..OPR

5. Whether the petitioner has no cause of action to file the claim, as alleged? ..OPR

6. Whether the petitioner has estopped by his act and conduct to file the present case? ..OPR

7. Whether the petitioner has not approached this Court with clean hand and has suppressed the material facts?

8. Relief.

6. The petitioner in order to prove his case has produced on record his affidavit Ext.PW1/A wherein he has reiterated the facts stated in the claim petition. He has also produced on record copy of ID Card Ext. PW1/B, pay slips Ext. PW1/C1 to Ext. PW1/C11. He has also examined Shri Gian Chand s/o Shri Chhaju Ram by way of examination-in-chief as PW2 wherein he has stated that the act of the petitioner was always cordial towards the respondent and his (petitioner) services were terminated on false allegations being Pradhan of Union when he was encouraging strike. He has also examined Smt. Usha Devi w/o Shri Joginder Singh as PW3 by way of examination-in-chief wherein she has stated that when her husband was in custody she had given letter Ext. R-5 to the company official.

7. Respondent on the other hand has examined Shri Ashwani Saini, Managing Director, M/s Saini Techno Constructs (P) Ltd. by way of affidavit Ext. RW1/A wherein he has reiterated the facts mentioned in the reply.

8. I have heard the learned Counsel for both the parties at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Yes
Issue No.2 : Decided accordingly
Issue No.3 : No

Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Issue No.7	:	No
Relief.	:	Claim petition is partly allowed per operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1

10. Petitioner has asserted on oath that he was working with Saini Techno *w.e.f.* 2008 to 2016 as field attendant in the project. He also submits that the project acquired 8 Biswas of his land and as per decision of the project management one family member of each family whose land was acquired by the project to give job according to their qualification and skill. The petitioner asserts that he was given the job of field attendant and continued to work from 2008 till his termination with honesty and his best ability as such there was no complaint against him related to work. The petitioner has also examined Shri Gian Chand who has stated that he was also working as labourer with Saini Techno since 2007 and his land was acquired by management by way of agreement. According to him the land of 15-20 people were acquired and conduct of the petitioner was always cordial towards the respondent during his service, despite this, his services were terminated on false allegations being Pradhan of Union when he was encouraging strike. Respondents have asserted in affidavit of Shri Ashwani Saini that the petitioner was employed with respondent only in the year 2010. It is however not disputed that the petitioner continued the work with the respondents from the year 2010 till 2016. Though the respondent asserts that the petitioner was merely a temporary daily wage workers however they also admit that he was made permanent by way of assistant field worker. The perusal of the cross-examination of RW1 Shri Ashwani Saini shows that the employer employee relationship between the respondents and the petitioner is not disputed only the length of service is disputed though the employment of the petitioner with the respondents from 2010 to 2016 is evident from the cross-examination of respondents witness. Respondents assert that the petitioner was merely a casual labourer however they have not produced any attendance record pertaining to the petitioner hence an adverse inference can be drawn against the respondents and it can be held that the petitioner had completed 240 days of continuous service immediately during 12 months preceding the date of his alleged disengagement.

11. The petitioner has alleged in his deposition that in the year 2016 a false case was made out against the petitioner and he remained in judicial custody for more than 45 days due to which he was absent from his job, however on his release from custody the very next day he had gone to project site to join his duty but he was not allowed to join. The said case is still pending before the court and his guilt is not proved till date in the court. Respondents on the other hand have asserted that petitioner's conduct was not upto the mark during time period working with the respondents. They have mentioned that petitioner was indulging in possessing Narcotic Drugs and Psychotropic Substance i.e. charas vide FIR No.0129 dated 12.10.2016 and was caught and arrested by the police. This fact was concealed by the petitioner's family and he remained continuously absent from his duty with no information being given to the respondents. Earlier petitioner indulged in illegal activities and used to take liquor. Under the influence of liquor he had fight with company's employee and he uttered obscene language towards the other employees. The case under Section 323 and 325 of IPC was also registered against the petitioner on 10.11.2012. Thus according to respondents the petitioner was in the habit of tarnishing of the reputation of the company. He was given chance to improve himself but he took undue advantage. Considering the above facts his conduct case bad impact on the other employees as well as lowered the reputation of the company hence his services were terminated. A legal notice was served to petitioner as per Industrial Disputes Act and petitioner was given chance to explain his case but he has failed to do so.

12. The petitioner however has denied that there was any instances of his previous misconduct respondents have produced on record show cause notice issued to the petitioner regarding his conduct as Mark-A and B. The copy of FIR against the petitioner has also been produced on record. With regard to the intentional absence of the petitioner from his duty it is pertinent to observe the statement of Smt. Usha Devi w/o Shri Joginder Singh who has stated that she has given letter Ext. R-5 to the company about the absence of petitioner. The petitioner in the claim petition has not suppressed the fact that since he was arrested in the case of NDPS and remained in custody and he was not able to attend his duty. The show cause notices allegedly issued by the respondents against the petitioner is Mark-D. The show cause notice has been issued by way of registered post however there is no acknowledgement annexed with the show cause notice to prove that the show cause notice was ever delivered to petitioner or was replied by him. The petitioner filed his reply after his release subsequent to which he was terminated by the respondents. Perusal of the case file as well as statement of RW1 Shri Ashwani Saini shows that the respondents have not carried out any inquiry proceedings against the petitioner prior to his termination. With regard to the previous conduct alleged against the petitioner there is no inquiry proceedings produced on the case file. In these circumstances it was only a presumption on the part of the respondents that the petitioner had indulged in misconduct or spoiled reputation of the company. The agreement Ext. R-3 mentioned that in case of any act amounting to misconduct or breach of terms and condition of employment express and implied on the part of the petitioner, the company reserves its right to terminate his services without any notice or without any prejudice to any other right or remedy which may be available to the company. Clause 12 of the agreement is violative of his basic fundamental rights and principles of natural justice and cannot be considered as enforceable in view of the constitutional rights of the petitioner. The Hon'ble High Court of Himachal Pradesh in **The Principal Secretary (Public Works) to the Government of H.P. Shimla-2 & others Versus Shri Ramesh Chand in CWP No. 8500/2013 decided on 24.2.2025** has held in paras no. 19, 20, 21 and 22 as follows:—

"19. Be that as it may, fact of the matter remains that the termination of the services of the claimant by way of retrenchment was on the basis of an alleged misconduct and was by way of punishment after claimant was found guilty of tampering with the official record in the preliminary inquiry that was conducted against him.

20. Hon'ble Supreme Court of India, in Nar Singh Pal Versus Union of India and Others, (2000) 3 Supreme Court Cases 588, was pleased to hold as under:- "8. The documents which have been placed before us pertain to the preliminary inquiry made against the appellant in which the statement of certain persons who had seen the incident was recorded. The services of the appellant were, thereafter, terminated by paying him the retrenchment compensation thr4ough a cheque along with the order dated 20-5-1992. The order having been passed on the basis of a preliminary inquiry and not on the basis of a regular departmental enquiry without issuing a charge-sheet or giving an opportunity of hearing to the appellant, cannot be sustained. 9. We may, at this stage, refer to the observations of Krishna Iyer. J. in Gujarat Steel Tubes Ltd. v. Mazdoor Sabha', in which the learned Judge observed as under: (SCC p. 617, para 53)

"53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the

master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry and proceeds to terminate Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used."

10. Applying the above principles, the order in the instant case, cannot be treated to be a simple order of retrenchment. It was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed without holding a regular departmental enquiry, cannot be sustained."

21. Learned Labour Court has relied upon this judgment of Hon'ble Supreme Court while setting aside the retrenchment of the claimant. A perusal of the judgment of Hon'ble Supreme Court demonstrates that Hon'ble Supreme Court has been pleased to hold that where an order of termination is passed by way of punishment, then it cannot be treated as a simple order of retrenchment and an order of dismissal having been passed without holding a regular departmental inquiry is not sustainable in law.

22. In the present case also, in the garb of retrenchment, the petitioner-Department indeed terminated the services of the claimant as punishment on the basis of report of the preliminary inquiry, without holding a regular departmental inquiry, and therefore, the order of termination of services of the claimant obviously was not sustainable in law. This is exactly what has been held by learned Labour Court. The factum of holding of a 12 2025:HHC:3754 preliminary inquiry and in the said inquiry, the claimant purportedly having conceded his guilt is of no consequence, for the reason that until and unless a proper inquiry was held against the claimant after issuance of a Charge-Sheet and until and unless due opportunity was afforded to the claimant to defend himself, termination of his services was indeed bad. Otherwise also, the order of retrenchment per se was bad, for the reason that no order of retrenchment under Section 25-F of the Industrial Disputes Act could have been passed by way of punishment in the light of statutory language of Section 2 (oo) of the Industrial Disputes Act".

13. In the present case also though there were allegations of misconduct and also a criminal case filed against the petitioner there was no pronouncement of the guilty through any criminal court. It was incumbent upon the company to conduct an inquiry, charge sheet the petitioner and give him an opportunity of defending himself and explain his position before resorting to the extreme measure of termination of his services. Pertinent to mention here that absence of the petitioner from the work was not intentional and hence it cannot be considered an abandonment of the services on his part. With regard to the criminal case under Sections 323 and 325 of IPC there is a judgment of criminal court to show that he has exonerated on the charges by the trial court. The respondents had not produced any judgment to show that the petitioner has convicted under NDPS Act. Above all there is absence of any inquiry by way of evidence of witnesses to show that petitioner has committed misconduct and caused loss to the reputation of the company. Thus termination of the petitioner by the respondents *w.e.f.* 25.11.2016 was illegal and violative of the provisions of the Industrial Disputes Act hence issue no.1 is accordingly decided in the favour of the petitioner.

Issue No.2

14. It has been proved while deciding issue No. 1 above that the petitioner was disengaged by the respondents from his service without following the due process of law and in violation of the provisions of the Industrial Disputes Act. Thus the petitioner is held entitled for the reinstatement on the similar post on the similar terms since the date of his disengagement *i.e.* 25.11.2016. He is also entitled to seniority and continuity in service and the compensation of Rs.1 lakh in lieu of back wages. This issue is decided accordingly.

Issues No. 3, 4, 5, 6 and 7

15. The onus of proving these issues was on the respondents. The maintainability of claim petition is evident from the employer employee relationship between respondents and the petitioner. The dispute between the parties is well within the jurisdiction of this court and since the petitioner was terminated without following due process of law he had enforceable cause of action to file claim. There is nothing on record to show that the petitioner had suppressed material facts from this court which would disentitle him from relief as claimed. Accordingly issues no. 3 to 7 are decided in the favour of the petitioner and against the respondents.

RELIEF

16. In view of my discussion on the issues no. 1 to 7 above, the claim petition succeeds and is partly allowed. The petitioner is held entitled to reinstatement on the similar post on the similar terms since the date of his disengagement i.e. 25.11.2016. He is also entitled to seniority and continuity in service and the compensation of Rs.1 lakh in lieu of back wages. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of April, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Una).

IN THE COURT OF PARVEEN CHAUHAN, PRESIDING JUDGE, LABOUR COURT-*CUM*-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT UNA)

Reference No. : 385/2016
Date of Institution : 01.6.2016
Date of Decision : 30.04.2025

Shri Ram Jeet s/o Shri Gurdiyal, r/o Village Kuthall, P.O. Sach, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, HPPWD Killar Division (Pangi), Tehsil Pangi, District Chamba, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. T.R. Bhardwaj, Ld. AR
For Respondent : Sh. Gaurav Keshav, Ld. ADA

AWARD

The following industrial disputes has been received by this court for the purpose of adjudication from the appropriate authority/Joint Labour Commissioner:

> "Whether alleged termination of services of Shri Ram Jeet s/o Shri Gurdiyal, r/o Village Kuthall, P.O. Sach, Tehsil Pangi, District Chamba, H.P. during 10/2005 by the Executive Engineer, H.P.P.W.D. Killar Division (Pangi), Tehsil Pangi, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified, whereas he has raised the industrial dispute vide demand notice dated 17.09.2013 after lapse of 8 years. If not, keeping in view delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The brief facts as stated in the claim petition are that the petitioner was initially engaged as daily waged beldar on muster roll basis in May, 2000 and continuously worked uptil September/October, 2005 with PWD Division Killar. During this period the petitioner had completed more than 160 days (as prescribed for tribal area of Pangi Tehsil) of continuous service in each calendar year. It is asserted that the services of the petitioner were terminated by the respondent during October, 2005 as the services of petitioner no more required by the department without any cogent reason. While terminating the services of the petitioner the respondent workmen junior to the petitioner namely Chhin Dei, Sur Dei, Shyami, Chunkun Ram, Sucheta Ram, Prakash Chand and Kishan Chand had been retained continuously by the department and as such the action of the respondent was illegal and clear cut violation of Section 25-G of the Industrial Disputes Act. Neither one month's notice of retrenchment nor wages in lieu of notice period to the petitioner was paid by the respondent at the time of termination of his services and violated the provisions of Section 25-F of the Industrial Disputes Act. It is asserted that the petitioner never remained close to work at his own since the year 2000 till the date of termination. It is asserted that the respondent had given intermittent breaks to the petitioner in his service in between 2000 to September, 2005 from time to time intentionally just to favour the junior workmen favourite to the respondent so the petitioner could not complete the criteria of 160 days. It is asserted that overall seniority list of daily waged workmen working under Pangi Division was not circulated as well as not got noted from the concerned workmen. It is further asserted that neither the principle of 'last come first go' nor the procedure of re-employment of retrenched workmen was also followed by the respondent. The action of the respondent was illegal and unjustified and gross violation of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act read with Rule 82 and 83 of H.P. Industrial Dispute Rule, 1974. It is asserted that after termination of the services of the petitioner the respondent had engaged number of new workmen from time to time namely Dev Raj, Gautam Singh and Sham Lal but no opportunity of re-employment was provided to the petitioner. Thereafter the petitioner had raised industrial dispute by way of serving demand notice on 17.9.2013 upon the respondent in which conciliation proceedings were held but no

settlement could be arrived and failure report was sent to the Labour Commissioner, H.P. by the Conciliation Officer Chamba and present reference was sent for adjudication by the appropriate authority. It is asserted that the dispute raised by the petitioner did not suffer from delay and laches as the provisions of Article 137 of Limitation Act, 1963 is not applicable to the proceeding under the Industrial Disputes Act. It is asserted that the petitioner was spotless services with the respondent and was never charge-sheeted for any act of indiscipline or misconduct and worked with full devotion. No charge-sheet was served upon the petitioner nor any inquiry was held against the petitioner. It is asserted that the respondent had committed gross violation of the provisions of Sections 25-F, 25-G and 25-H of the Act. It is prayed that the termination of services of petitioner may be set aside and quashed and respondent be directed to reinstate the services of the petitioner with full back wages, seniority including continuity in service as the petitioner remained unemployed since the date of his illegal retrenchment/termination. It is further prayed that the respondent may be directed to count the period of intermittent breaks given to petitioner between 2000 to 2005 from time to time towards calculation of continuous service of 160 days in each calendar year under Section 25-B of the Industrial Disputes Act as well as regularize the services of petitioner *w.e.f.* 1.1.2008 along-with all consequential benefits.

3. In reply to the claim petition preliminary objections qua maintainability and petition being bad on account of delay and laches have been raised. On merits, it is asserted that the petitioner was never engaged by the respondent. All other averments made parawise in the petition are denied and it is prayed that the claim petition deserves to be dismissed.

4. In rejoinder preliminary objections were denied facts stated in the petition are reasserted and reaffirmed.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication and determination:—

1. Whether termination of service of petitioner by the respondent during October, 2005 is/was illegal and unjustified as alleged? ..OPP

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP

3. Whether the claim petition is not maintainable in the present form? ..OPR

4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? ..OPR

Relief.

6. The petitioner in order to prove his case has produced on record his affidavit Ext. PW1/A. He has also produced on record copy of mandays chart of junior workmen Ext.PW1/B to Ext. PW1/L. The learned AR for the petitioner has also produced on record copies of muster rolls Ext. PA, Ext. PB and Ext. PC obtained under RTI on behalf of petitioner.

7. Respondent on the other hand has examined Er. Dinesh Kumar, Executive Engineer, Killar Division HPPWD Killar, Tehsil Pangi, District Chamba by way of affidavit RW-1 wherein he has reiterated the facts mentioned in the reply. The respondent has also produced on record copies of muster rolls of various workmen Ext. R1 to Ext. R 13.

8. I have heard the learned AR for the petitioner as well as learned ADA for the respondent at length and records perused.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	No
Issue No.2	:	No
Issue No.3	:	Yes
Issue No.4	:	Yes
Relief.	:	Claim petition is dismissed per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2

10. Both these issues shall be taken up together for the purpose of adjudication.

11. Petitioner has deposed on oath that he was engaged as Beldar on muster roll basis in May 2000 and worked continuously till September/October, 2005 until when his services were wrongly terminated by the respondent. Contrary to this contention the respondents have denied that petitioner was ever engaged by the department. The petitioner in his cross-examination has denied that he had not worked as Bledar with HPPWD department, Killar continuously and his record is not available with department. RW1 Shri Dinesh Kumar, Executive Engineer, Killar has denied that petitioner had worked with the department from May, 1997 till September, 2005. He also denied that services of petitioner were terminated during October, 2005. He has however admitted that in muster rolls Ext. PA, PB, PC the name of petitioner is mentioned and these muster rolls are with respect to road maintenance work. The above muster rolls are in respect of June, 2004, July, 2004 and August, 2004. No other muster rolls pertaining to petitioner are produced by department. The petitioner is however claiming his employment from the year 1997. Except the statement of petitioner there is no other oral and documentary evidence to prove that he was employed in the year 1997 and continuously worked till October, 2005. RW1 Shri Dinesh Kumar has not admitted that workers figuring in muster roll Ext. PA to PC have been regularized. Even if it was so the petitioner had to establish his employment with respondent since 1997. He has not examined any co-worker or any other witness to show that he continuously worked till October, 2005. No record of any payment made to him is produced by him. On the one hand the petitioner is alleging that he was provided intentional intermittent breaks but there is no reference to this effect on the other hand he asserts that he had completed 160 days criteria for tribal area. The muster rolls Ext. PA, PB and PC do not point towards the eligibility of petitioner under Section 25-B of the Industrial Disputes Act. Hence he is not entitled for relief under Section 25-F of the Industrial Disputes Act. Hence issue no.1 is decided against the petitioner.

Issues No. 3 and 4

12. The onus of proving these issues was on the respondent. The maintainability of the claim petition was primarily challenged on the ground that petitioner was never engaged by respondent and hence was not entitled for relief as claimed. Perusal of the record show that petitioner was employed for period of three months however he could not comply with the requisite provisions of Section 25-B of the Industrial Disputes Act hence he is entitled him any relief in the present case. The petition has been filed after considerable period of time and petitioner has not been able to produce any evidence to show that he was making oral or documentary representation to the department or the dispute between the petitioner and the respondent remained alive until the reference was made to this court. It appears that the claim petition is bad on account of delay and laches also. Hence issues no.3 and 4 are decided in the favour of the respondent.

RELIEF

13. In view of my discussion on the issues nos. 1 to 4 above, the present claim made by the petitioner against the respondent is not maintainable and the same is accordingly dismissed. Parties are left to bear their costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of April, 2025.

Sd/-
(PARVEEN CHAUHAN),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.
(Camp at Una).

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated, the 1st August, 2025

No. HHC/Estt. 3(614)/2008.—04 days earned leave on and with effect from 11-08-2025 to 14-08-2025 with permission to suffix second Saturday and Sunday falling on 09th & 10th August, 2025 is hereby sanctioned in favour of Shri Rajeev Kumar Verma, Secretary of this Registry.

Certified that Shri Rajeev Kumar Verma is likely to join the same post and at the same station from where he proceeds on leave after the expiry of the above leave period.

Certified that Shri Rajeev Kumar Verma would have continued to officiate the same post of Secretary but for his proceeding on leave.

By order ,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, the 2nd August, 2025

No. HHC/Admn. 16(21)75-V.—Hon'ble the Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, Section 333(1)(b) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and Rule 5(vi) of the H.P Oath Commissioners (Appointment & Control) Rules, 2007, has been pleased to appoint Ms. Anita (HIM/188/2016), Ms. Mamta Devi (HIM/39/2024) and Ms. Shivangi (HIM/414/2024), Advocates as Oath Commissioners for the High

Court of Himachal Pradesh, Shimla, for a period of two years with immediate effect for administering oaths and affirmations on affidavits to the deponents under the aforesaid Codes and Rules.

By order ,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Dated, the 4th August, 2025

No. HHC/Estt. 3(592)/2007-I.—05 days earned leave *w.e.f.* 22-07-2025 to 26-07-2025 with permission to suffix Sunday on 27-07-2025 is hereby sanctioned, *ex-post-facto*, in favour of Shri Sanjeev Kumar Sethi, Court Master of this Registry.

Certified that Shri Sanjeev Kumar Sethi has joined the same post and at the same station from where he had proceed on leave after the expiry of the above leave period.

Certified that Shri Sanjeev Kumar Sethi would have continued to officiate the same post of Court Master for his proceeding on leave.

By order ,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Dated, the 4th August, 2025

No. HHC/Estt. 3(532)/2002-I.—10 days earned leave *w.e.f.* 19-07-2025 to 28-07-2025 is hereby sanctioned, *ex-post-facto*, in favour of Shri Subhash Kumar Baudh, Court Master of this Registry.

Certified that Shri Subhash Kumar Baudh has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Subhash Kumar Baudh would have continued to officiate the same post of Court Master but for his proceeding on leave.

By order ,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, the 1st August, 2025

No. HHC/GAZ/14-331/2013.—Hon'ble the Chief Justice has been pleased to grant 09 days' earned leave *w.e.f.* 11-08-2025 to 19-08-2025 with permission to prefix 2nd Saturday and Sunday falling on 09-08-2025 and 10-08-2025 in favour of Ms. Madhvi Singh, Senior Civil Judge-*cum*-ACJM, Court No. 1, Sundernagar, H.P.

Certified that Ms. Madhvi Singh is likely to join the same post and at the same station from where she proceeds on leave, after expiry of the above period of leave.

Also certified that Ms. Madhvi Singh would have continued to hold the post of Senior Civil Judge-*cum*-ACJM, Court No. 1, Sundernagar, H.P., but for her proceeding on leave for the above period.

By order ,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, the 4th August, 2025

No. HHC/Admn.16(10)74-VII.—Hon'ble the Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, Section 333(1)(b) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and Rule 5(vi) of the H.P. Oath Commissioners (Appointment & Control) Rules, 2007, has been pleased to appoint S/Sh. Charan Singh (HIM/283/2022) and Pradeep Kumar (HIM/531/2018), Advocates as Oath Commissioners at Banjar, Distt. Kullu, H.P., for a period of two years *w.e.f.* 05-08-2025 for administering oaths and affirmations on affidavits to the deponents under the aforesaid Codes and Rules.

By order of Hon'ble the Chief Justice,

Sd/-

Registrar (Administration).

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, the 4th August, 2025

No. HHC/Admn.16(10)74-VII.—Hon'ble the Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, Section 333(1)(b) of the Bharatiya

Nagarik Suraksha Sanhita, 2023 and Rule 5(vi) of the H.P. Oath Commissioners (Appointment & Control) Rules, 2007, has been pleased to appoint S/Sh. Prem Prakash (HIM/144/2016) and Nitish Kumar (HIM/522/2021), Advocates as Oath Commissioners at Kullu, District Kullu, H.P., for a period of two years *w.e.f.* 10-08-2025 for administering oaths and affirmations on affidavits to the deponents under the aforesaid Codes and Rules.

By order of Hon'ble the Chief Justice,

Sd/-

Registrar (Administration).

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Shimla, the 5th August, 2025

No. HHC/GAZ/14-315/2010-I.—Hon'ble the Chief Justice has been pleased to grant *ex-post-facto* sanction of 03 days' commuted leave *w.e.f.* 30-05-2025 to 01-06-2025 in favour of Sh. Nikhil Agarwal, Senior Civil Judge-*cum*-CJM, Chamba, H.P.

Certificate that Sh. Nikhil Agarwal had joined the same post and at the same station from where he proceeded on leave, after expiry of the above period of leave.

Also certified that Sh. Nikhil Agarwal would have continued to hold the post of Senior Civil Judge-*cum*-CJM, Chamba, but for his proceeding on leave for the above period.

By order ,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

NOTIFICATION

Shimla, the 5th August, 2025

No. HHC/GAZ/14-291/2006-I.—Hon'ble the Chief Justice has been pleased to grant *ex-post-facto* sanction of 03 days' commuted leave *w.e.f.* 08-04-2025 to 10-04-2025 and further 01 day commuted leave for 13-05-2025 in favour of Sh. Subhash Chander Bhaseen, Additional District and Session Judge, Fast Track Special Court (Rape/POCSO), Sirmaur at Nahan, H.P.

Certified that Sh. Subhash Chander Bhaseen had joined the same post and at the same station from where he proceeded on leave, after expiry of the above period of leave.

Also certified that Sh. Subhash Chander Bhaseen would have continued to hold the post of Additional District and Session Judge, Fast Track Special Court (Rape/POCSO), Sirmaur at Nahan but for his proceeding on leave for the above period.

By order ,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated, the 6th August, 2025

No. HHC/Estt. 3(649)/2009.—04 days commuted leave on and with effect from 19-07-2025 to 22-07-2025, is hereby sanctioned, *ex-post-facto*, in favour of Shri Pritam Singh Thakur, Court Secretary of this Registry.

Certified that Sh. Pritam Singh Thakur, has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Sh. Pritam Singh Thakur, would have continued to officiate the same post of Court Secretary but for his proceeding on leave.

By order ,
Sd/-
Registrar General.

CHANGE OF NAME

I, Mahender Singh s/o Sh. Sita Ram, r/o Village Lahri Tarkhana, P.O. Sohari, Tehsil Dhatwal at Bijhari, Distt. Hamirpur (H.P.) declare that I have changed my name from Mohinder Singh to Mahender Singh for all purposes in future. Please note.

MAHENDER SINGH
s/o Sh. Sita Ram,
r/o Village Lahri Tarkhana, P.O. Sohari,
Tehsil Dhatwal at Bijhari, Distt. Hamirpur (H.P.).

CHANGE OF NAME

I, Amandeep Singh s/o Manjeet Singh, r/o Ward No. 1, House 413, Una, Tehsil & District Una (H.P.) declare that I have changed my name from Yashpreet Singh to Amandeep Singh. All concerned note.

AMANDEEP SINGH
s/o Manjeet Singh,
r/o Ward No. 1, House 413, Una,
Tehsil & District Una (H.P.).

CHANGE OF NAME

I, Parmeena Devi w/o Sikander, r/o Ward No. 03, V.P.O. Ramnagar Tatehl, Tehsil Palampur, Distt. Kangra (H.P.)-176 103 declare that I have changed my name from Anju Bala to Parmeena Devi. Anju Bala and Parmeena Devi is the same woman. All concerned note.

PARMEENA DEVI
w/o Sikander,
r/o Ward No. 03, V.P.O. Ramnagar Tatehl,
Tehsil Palampur, Distt. Kangra (H.P.)-176 103.

CORRECTION OF NAME

I, Kuldeep Kanwal s/o Kishan Dass Kanwal, Village Jhikli Dar, P.O. Dari, Tehsil Dharamshala, Distt. Kangra (H.P.) declare that my name is entered as Kuldeep Kumar Kanwal according to the record of IIFL Capital Services Limited, Thane Maharashtra which is incorrect, whereas my correct name is Kuldeep Kanwal. All concerned note it.

KULDEEP KANWAL
s/o Kishan Dass Kanwal,
Village Jhikli Dar, P.O. Dari,
Tehsil Dharamshala, Distt. Kangra (H.P.).

CHANGE OF NAME

I, Singho s/o Hari Singh, r/o V.P.O. Barang, Tehsil Kalpa, District Kinnaur (H.P.) have changed my name to Singhu Ram for all purposes.

SINGHO
s/o Hari Singh,
r/o V.P.O. Barang,
Tehsil Kalpa, District Kinnaur (H.P.).

CHANGE OF NAME

I, Abhishek Bhatia s/o Atma Ram, r/o Village Sornu, P.O. Kamlehar, Tehsil Palampur, District Kangra (H.P.) declare that I have changed my name from Abhishek to Abhishek Bhatia. In future I may be known as Abhishek Bhatia for all purposes. Concerned note.

ABHISHEK BHATIA
s/o Atma Ram,
r/o Village Sornu, P.O. Kamlehar,
Tehsil Palampur, District Kangra (H.P.).

CHANGE OF NAME

I, Ajay Adhikari s/o Leel Bahadur, Village Breon, Panog (75), P.O. Panog, District Shimla, 8 Himachal Pradesh-171 204 that I have changed my name from Ajay (previous name) to Ajay Adhikari (new name). All concerned please may note.

AJAY ADHIKARI
s/o Leel Bahadur,
Village Breon, Panog (75), P.O. Panog,
District Shimla, 8 Himachal Pradesh-171 204.

CHANGE OF NAME

I, Mohan Lal s/o Sh. Beli Ram, r/o Village Punder, P.O. Deha, Tehsil Theog, District Shimla (H.P.) declare that I have changed my son's name Rishav (previous name) to Rishabh (new name). All concerned please may note.

MOHAN LAL
s/o Sh. Beli Ram,
r/o Village Punder, P.O. Deha,
Tehsil Theog, District Shimla (H.P.).

CHANGE OF NAME

I, Ranju w/o Rajinder Singh, Araihla (13), Baghi, Shimla, Kotkhai(t) Himachal Pradesh-171 225 that I have changed my name from Ranjna Devi (previous name) to Ranju (new name). All concerned please may note.

RANJU
w/o Rajinder Singh,
Araihla (13), Baghi,
Shimla, Kotkhai(t) Himachal Pradesh-171 225.

LAW DEPARTMENT

NOTIFICATION

Shimla-02, the 12th August, 2025

No. LLR-A(2)-1/2014-Legn.—In exercise of the powers conferred by rule 4 of the Notaries Rules, 1956, the Governor, Himachal Pradesh, in supersession of previous Notification No. LLR-A(2)-1/2014-Legn., dated 3rd March, 2023 and Office Order No. LLR-B(1)5/96-Loose dated

23rd July, 2025, is pleased to designate the senior most Deputy Legal Remembrancer-*cum*-Deputy Secretary (Law-English) to the Government of Himachal Pradesh as **'Competent Authority'** for the entire State of Himachal Pradesh for the purpose of the said rules, with immediate effect.

By order,

Sd/-
(SHARAD KUMAR LAGWAL)
LR-cum-Principal Secretary (Law).

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।